MODERN
BUSINESS PRACTICE

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A COMPREHENSIVE PRACTICAL GUIDE AND WORK OF REFERENCE FOR OFFICE WAREHOUSE EXCHANGE AND MARKET

Prepared by many Specialists
under the Editorship of

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VOLUME V

FOREWORD

BANKING AS A PROFESSION

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In the choice of an occupation for boys who have left school, it is singular that a banking career should not be regarded with more favour. There are, indeed, quite a number of stock arguments against banking as a profession, the chief of these being: (1) that the work itself is monotonous, and not calculated to develop the higher mental faculties: (2) that promotion is necessarily and exceptionally slow; (3) that there are comparatively few decently salaried offices available, and that for these there is generally a large number of candidates: (4) that the good posts in the bank usually go to those who can command the most influence amongst the directors or leading shareholders; and (5) that the scale of remuneration offered to the rank and file is meagre, and by no means proportionate to the social status which bank clerks are supposed to maintain. In short, "banking" as a profession seems to be looked upon by the general public as "more respectable than profitable". As a matter of fact, however, these objections are to a large extent imaginary, and to the youth who is possessed of good health, ordinary mental capacity, a fair education and the desire to "get on", there are few professions which, in our crowded world of to-day, offer more certain rewards.

It is, of course, true that after a man has mastered the intricacies of banking, he cannot commence as a banker on his own account or in partnership with others, like a broker or merchant, but his business training and experience are nevertheless assets of real value, for which he will doubtless find a suitable market later on. Even if a youth is destined eventually to become a broker, a commission dealer, or a merchant, the bank affords a business training which no other occupation can rival. He will there obtain a knowledge of money and its peculiarities that will be of inestimable advantage to him in his own business, and the time he may expend upon mere routine will not be wasted, if it teaches him to be accurate and methodical. Surely there is something also in the fact that an appointment in a bank carries with it, in ordinary circumstances, an appointment for life, with superadded advantages in the shape of a pension scheme and a widow's fund. There is, of course, no legal obligation on the part of a bank to

retain in its services an officer who may prove to be unsuitable; but, while this is so, there is seldom any disposition to dispense with well-behaved and competent men, the only exception being in the case of foreign institutions, where extraordinary trade fluctuations may necessitate a reduction in the number of the staff. Indeed, what was true of the French soldier in the time of Napoleon I, may be said to apply in a marked degree to every bank clerk—"that he carries in his knapsack the baton of a field-marshal". If confirmation of this were wanted, it will be found in the fact that, of those who to-day occupy the highest posts in our leading banks, the majority are men who have served in the ranks.

There are, in reality, two "careers" open to every youth who enters the service of a bank. If his aspirations do not extend beyond the writing, however neatly, of a cash book, and the balancing, however expeditiously, of a ledger, he will assuredly develop into a mere bookkeeper, with a proportionately modest salary. If, on the other hand, a bank clerk be careful, accurate, and not afraid of hard work, his own abilities and attainments will bring him to the front more quickly than any so-called influence he can command. It is true of banking as of other professions that influence may put a man into a position, but the man himself must possess intelligence, fidelity, and zeal if he is to rise still higher. Energy, ambition, and self-denial are here, as elsewhere, the keynotes to progress.

Juniors are admitted to the service of a bank usually on the recommendation of a director or influential customer, and in the case of the Bank of England and one or two of the leading foreign banks it is understood such a "nomination" is essential. So far as the Scotch banks are concerned they prefer youths of about sixteen years of age, who are bound as apprentices for a term of three or four years. In England and in Ireland clerks enter at the age of eighteen or nineteen, and are regarded as juniors for the first four or five years. The name of the applicant is recorded, and when a vacancy is anticipated the candidate is subjected to an educational examination. This includes writing to dictation, arithmetic, history, and geography. The test is not a severe one, but it is remarkable how small a percentage of our youths excel in the correct spelling of words in everyday use. Good handwriting is of considerable value, especially as it brings to its possessor a better class of work. Training in a small branch is probably the most advantageous, as one is allowed there to share in turn in every department of the work, and to see the whole of the transactions from beginning to end. In a large office a youth may remain for a year or more at one particular desk, and little of the other ordinary business may come under his observation.

With regard to the remuneration of bank officials it is scarcely possible to give exact particulars, as the salaries paid in different districts, and even by different banks in the same district, vary considerably. In Scotland during apprenticeship a youth may receive in all £50 or £60 only, while in London and the provinces a junior during the first four years' service may receive from £150 to £250. In some banks the officers are divided in classes,—first, second, and third,—each grade having a minimum and a maximum salary assigned to it. This, if framed on a reasonably liberal scale,

is looked upon as advantageous to the clerks. Speaking generally, bank salaries are about 25% higher in London than in the provinces, and about 33% higher in the provinces than in Scotland. Facetious juniors allege that in Scotland salaries are paid quarterly, because in most cases it is impossible to divide the annual total by twelve!

Each applicant on admission to the service of a bank is obliged to furnish security to a specified amount, either personal, or by a bond of a Guarantee Association. Nearly all the larger banks, however, have a Guarantee Fund of their own, to which the officials, in place of finding security, must contribute annually at the rate of 1*s.* to 2*s.* 6*d.* per cent on the sum at which they may be rated.

The men who succeed best in banking are not, however, those who remain at home, and there is nearly always a demand for well-trained bank officials in the Dominions and Colonies and other parts of the globe. The best time for a youth to take this step is not long after the expiry of his apprenticeship, and then, given good health, promotion is seldom disappointing or long delayed.

South Africa for many years proved an almost insatiable field for bank clerks, but owing to bad trade and other vicissitudes there has been little demand from that quarter for some time. Posts in Africa were then offered for a term of from three to five years, but although their engagement was thus limited the clerks naturally expected the bank might retain their services at the expiry of the period. Unfortunately, in many cases the bank, in order to effect retrenchment, had to give notices of dismissal, and some difficulty was experienced in finding fresh employment by those whose services had thus been dispensed with. In fairness, however, it should be added that this is the only instance of the kind known to the writer in an experience extending over nearly forty years.

Junior clerks in India receive a salary to start with of not less than £250, with free apartments, and free passage out. Banking conditions in that country are altogether different from, and pleasanter than, those at home, as the "chiefs" fraternize with their juniors to a much greater extent. Whether this is due to "the increased intercommunity of feeling engendered by the fact of both being fellow countrymen in a strange land" or not, it is certain that men who have spent some time in India do not exhibit any feverish desire to return permanently to the old country. The same remark may be made regarding bank officials who have sojourned in China or in Japan for any length of time.

South America and Australasia also attract many of our youths, as well as bank men who have seen a number of years' service. In South America the terms offered are fairly liberal, but the climate is very uncertain, and any neglect of nature's laws in that country usually brings with it severe penalties.

The greatest demand by far for bank officials of all kinds comes at present from Canada, where vast regions of new territory are being exploited, and new townships are springing up almost daily. The Canadian banks prefer youths between nineteen and twenty-one years of age, and seem to be able to find openings for any number

of these. The commencing salary offered, however, is low, and does not usually exceed $600 or $700 per annum, although in many cases the clerks receive house accommodation in addition. Scotch-trained lads are preferred, as they are less easily attracted to other occupations (which offer more money) than the Canadian-born youth, or even the Englishman. It will be seen, therefore, that any bank official who is so inclined, and who does not delay too long, can generally find an appointment abroad, which will bring with it not only a more interesting life, but much more substantial remuneration than at home.

In conclusion it may be mentioned that the conditions of a bank official's life are now rendered much more congenial and attractive through the opening of Bankers' Institutes. These provide instruction by means of classes, lectures, essay competitions, and magazines, and offer substantial prizes to any who are disposed to compete. In Scotland each officer who passes the lower or "Associates" examination receives from the bank by which he is employed a donation of £5, and on passing the "Membership" examination a donation of £10. A similar arrangement, it is understood, exists among the banks in Ireland. Certificates are granted to all who pass the Institute examinations, and such certificates are helpful, not only to the bank youth at home, as indicating the extent of his general and professional knowledge, but are invaluable to those who seek employment abroad.

The oldest of these societies, "The Institute of Bankers in Scotland", dates from 1875; the English Society, "The Institute of Bankers", from 1879; and "The Institute of Bankers in Ireland", from 1898. The Scottish Institute has on its roll a membership of over 2400, and the English Institute a grand total of over 8700, that of Ireland numbering over 800. Recreation rooms, reading rooms, and libraries are provided in most of the larger towns, and the welfare of the bank officials generally receives more consideration and attention than was formerly the case. The lead given by the home country in this respect has been followed in other parts of the world, and to-day there are flourishing Bankers' Institutes in Canada, South Africa, Australia, and elsewhere.

PART III

THE LAW OF COMMERCE AND BUSINESS

(Continued)

CHAPTER XVIII

HOTELS, INNS, AND BOARDING HOUSES

Introductory—Inns—Boarding and Refreshment Houses

INTRODUCTORY

An hotel may or may not be an inn, and it may sell excisable liquor or, as in the case of temperance hotels, it may not. Except in so far as hotels are inns within the strict legal meaning of that word there is no law peculiar to them, i.e. the rights and liabilities of the hotel-keeper, who is not also an innkeeper, arise out of the contract, express or implied, subsisting between himself and his guest.

This chapter treats of hotels first in so far as they are inns, and secondly it deals with a few legal points affecting hotels, boarding and lodging houses and refreshment houses which are not inns.

As to the Licensing Acts, see Part I, Chapter XIII and Chapter XXIX of this Part.

INNS

An inn may be defined as a house the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a condition in which they are fit to be received.

From this it will be seen that whether the house is an inn depends on the intention and profession of the person carrying on the business. Does he hold himself out and profess to receive travellers? If so, he is the keeper of an inn, but it must always be a question of fact in each case.

Having regard to this definition we may at once rule out places which do not provide sleeping accommodation, that being one of the chief requirements of the traveller, e.g. an ordinary public-house, beerhouse, or tavern, a coffee-house, an ordinary restaurant, an hotel bar having a separate entrance We may also rule out places which accept guests on special contracts only, such, e.g., as some so-called private hotels, boarding houses, and lodging houses.

According to the custom of the realm certain peculiar duties are cast upon an innkeeper, and in consideration thereof he is accorded certain rights. He is bound (*a*) to receive all travellers; (*b*) he is practically an insurer under the common law of the goods of his guests; (*c*) he is liable to have soldiers billeted on him. On the other hand he is given a lien for his charges on all the goods brought to the inn by a guest.

Duty to Receive Travellers

An innkeeper is a sort of public servant; he is chargeable to the public and compellable to lodge all comers, and he cannot refuse whom he pleases. The extent of his obligation depends on his public profession; e.g., if he has only a stable for a horse he is not bound to receive a carriage.

The first condition of this obligation is that the person applying for accommodation must be a traveller. Whether he is a traveller is a question of fact, and it is impossible to lay down any hard-and-fast definition of a traveller. Originally the obligation was probably limited to accommodating one actually on his journey until he prosecutes its next stage, but this has now been much extended. As far back as 1609 it was settled that the guest need not be actually on a journey, for he may be

at the end of it, as at London about his business. He need not even have journeyed to the town; he may be a traveller though he has removed into the inn from neighbouring furnished lodgings in the same town, but a householder actually living in the same town is not a traveller.

It is not necessary that the guest should himself stay at the inn; it is enough that he leaves his horse at the inn, for the horse must be fed, by which the innkeeper has gain; but he is not a guest if he leaves only a trunk or baggage.

The traveller must be in a condition in which he can be received; so admission may be refused if he be drunk or unclean, or behave in an indecent or improper manner, or be accompanied by a dog which causes alarm or annoyance to others. An innkeeper would hardly be justified, however, in refusing a traveller merely because he had a dog with him if it were harmless, but he might insist on its being kept in a proper place provided for it, and might object to its being brought into the public rooms. Whether a person was in a state in which the innkeeper was justified in refusing him admission must always be a question of fact. In one case a jury found that a landlord was justified in refusing a lady in "rational" dress permission to enter the coffee-room, though he was willing to serve refreshments to her in the bar parlour. The innkeeper cannot refuse to admit the traveller because it is Sunday, or because he arrives at an hour of the night when the innkeeper and his family have gone to bed, or because he refuses to give his name and address, or because he is ill, or because there are persons in the inn for whose behaviour and honesty he will not answer

The innkeeper must also accept the ordinary luggage of the guest. "If the traveller brought something exceptional which is not luggage—such as a tiger or a package of dynamite—the innkeeper might refuse to take it in; but the custom of the realm is that, unless there is some reason to the contrary in the exceptional character of the things brought, he must take in the traveller and his goods"—Lord Esher, M.R., in *Robins v. Gray* (1895).

As we have seen, the nature of the accommodation depends on the profession of the innkeeper. A traveller is entitled to reasonable accommodation, but he is not entitled to select a particular apartment, nor can he insist on occupying a bedroom for the purpose of sitting up all night, so long as the innkeeper is willing and offers to furnish him with a proper room for that purpose —*Fell v. Knight* (1841). Nor is an innkeeper bound to receive if all his bedrooms be full, although the coffee-room be unoccupied and the traveller demands to be allowed to pass the night there—*Brown v. Brandt* (1902). Nor is he obliged to provide a showroom for his guest to enable him to exhibit to prospective customers, goods in which he is travelling.

The relation of guest and host arises as soon as the traveller enters the inn with the intention of using it as an inn, and is so received by the host. It does not matter that no food or lodging has been supplied or found, nor does it matter who is to pay; it may be the traveller himself or it may be some other person who pays for him. Thus, where a hockey club arranged with an innkeeper, that they and teams visiting them should have the use of a certain room in the inn on one day in the week, the club paying for the room and for all refreshments supplied to its members and the members of visiting teams, the visitors were held to be guests on entering the room—*Wright v. Anderton* (1909).

The relation of innkeeper and guest once established must be presumed to continue in the absence of evidence showing that it has been determined. Thus, where a man went to an inn with a groom and two racehorses in the character of a guest, and they remained there for several months, being occasionally absent for several days together at races in different parts of the country, but always with the intention of returning to the inn, it was held that he continued there as a guest, and that his occasional absences did not destroy the innkeeper's lien upon the horses for his bill—*Allen v. Smith* (1862). And this is so even if the guest states that he will return in three or four days' time and does not return for a fortnight.

Whether the relation continues or has ceased is a question of fact, and it would seem that no express notice is necessary on the part of the innkeeper. unless he desires the guest to leave, for then the guest is entitled to reasonable notice. The length of the stay is an important ingredient in determining the question; but mere length of residence is not decisive of the matter, because there may be circumstances which show that the length of the stay does not prevent the guest being a traveller, as, for instance, where it arises from illness.

But though a traveller stay at an inn he may do so not as a "guest" in the technical meaning of that word, but as a boarder; and on this distinction will turn such questions as whether the innkeeper is bound to receive the person, whether and in what way he will be liable for loss or damage to his goods, and whether or not he will have a lien on them for his charges. Moreover, he may enter the house as a boarder, or he may subsequently become a boarder though he entered as a guest. Whether a person is a guest or is a boarder must

depend upon the following test: Can he come when he likes and go when he pleases, or is he liable on a contract to stay or pay for a definite period? In the former case he is a guest, and in the latter he is a boarder. As we have seen, a guest may become a boarder by the long duration of his stay; but in that case it would seem that something must be done by the innkeeper or the guest to change the relation, and the lien of the innkeeper will apparently continue.

Reasonable Charges

If an innkeeper were entitled to charge as he pleased, he could readily defeat his common law obligation to receive all travellers. The law therefore provides that he is entitled to make only a reasonable charge. In deciding what is reasonable, regard must be had to the nature of the accommodation and the value of the goods received into his care as bearing on the trouble and risk to which he will be exposed. If the innkeeper be guilty of an overcharge the guest should tender him a reasonable amount. An innkeeper guilty of gross overcharge may be indicted and fined for his extortion.

Payment in Advance

As the innkeeper is bound to receive the traveller he is entitled to payment in advance. Before a traveller who has been refused admission can take proceedings against the innkeeper, he must make a tender of the amount to which the innkeeper would be reasonably entitled for the entertainment sought; it is not sufficient for the plaintiff to allege that he was ready to pay, he should state further that he was willing and offered to pay. It has been doubted whether tender is necessary where the refusal is on some ground other than that of non-payment in advance. The former view appears to be the sounder, but it would seem that it is not necessary to prove a legal tender in the strict sense, it is enough for the traveller to prove that he was ready and willing and offered to pay a reasonable charge.

Liability for Refusing to Receive Travellers

An innkeeper who refuses to admit a guest without lawful excuse may be indicted; or he may be proceeded against civilly by action for damages.

Liability for the Goods of Guests

The almost unlimited liability of an innkeeper for the safeguarding of his guests' goods has been considerably modified by the Innkeepers Act. As, however, the common law still applies in the rare cases in which innkeepers fail to take advantage of this Act, and for a proper understanding of its provisions, the liability at common law will be first dealt with.

The innkeeper is liable at common law for all loss or injury to the goods of his guest not arising from the negligence of the guest, the act of God, or the King's enemies. The liability extends to all goods and to money.

"The reason why the law makes an innkeeper liable for the loss of his guests' goods in olden times," said Chief Justice Erle in *Houlden v. Soulby* (1860), "was that the wayfaring guest has no means of knowing the neighbourhood or the characters of those he may meet with at the inn. It was therefore thought right to cast that duty on the host. Knowing that this is one of the liabilities he incurs, the innkeeper can make such charges for the entertainment of his guests as will compensate him for the risk; and it may be observed that, unless the law cast upon him this burthen, a dishonest innkeeper might be tempted to take advantage of a wealthy traveller."

This liability arises at the moment when the relation of host and guest is established, and continues until it is determined (see page 4). But it depends on this relation, so that an innkeeper will not be liable for the loss of goods otherwise deposited with him, e.g. for the purpose of being forwarded by a carrier, without proof of negligence.

The goods need not be in the special keeping of the innkeeper in order to make him liable; it is enough that they are in the inn even without his knowledge.

A person coming into an inn for refreshment is a guest. A person, being on his way from his place of business in Liverpool to his house outside the town, went into the dining-room of an hotel, which was an inn, in Liverpool to get a meal. He put his overcoat in a place where coats were ordinarily kept in that room. The coat was missing when he had finished his meal. The proprietors were held liable as innkeepers —*Orchard v. Bush* (1898). If the hotel had not been an inn it would have been necessary to show that the coat had been delivered into the possession of the proprietor or his servant and to prove negligence—*Ultzen v. Nicholls* (1894).

It has been decided that if the innkeeper gives the keys of the chamber to his guest, that will not in itself discharge his liability for goods stolen out of the room which the guest has left unlocked—*Calye's Case* (1584). But if the guest asks for or accepts the key under circumstances

showing that he takes on himself the care of his goods, this exempts the innkeeper from liability —*Burgess v. Clements* (1815).

Nor will the landlord be liable where, though the goods are on the premises, they are in a room which is being used for a purpose wholly alien from the ordinary purposes of an inn, e.g. a showroom.

The tendency of late decisions has been to regard the omission of the guest to lock his door as one of the elements of negligence. It may be the only one and yet be sufficient in a case, e.g. where there are races in the neighbourhood causing a great number of suspicious characters to be about the inn.

The mere fact of leaving the bedroom door unlocked will not—apart from special circumstances—be in itself sufficient evidence of negligence; but it is an element of negligence when coupled with other circumstances, such, for example, as the wearing of valuable jewellery in the public rooms, the ostentatious display of much money in the coffee-room, or the omission to place valuable property in a locked drawer or trunk in the bedroom.

The innkeeper will be excused if the guest's companion or servant steals the goods, or if he requests the guest to put the goods in a particular place and then he will warrant their safety, and the guest refuses to do so—*Calye's Case* (1584).

Liability under the Innkeepers Act, 1863

By section 1 of this Act, "No innkeeper shall be liable to make good to any guest of such innkeeper any loss of or injury to goods or property brought to his inn, not being a horse or other live animal or any gear appertaining thereto, or any carriage, to a greater amount than the sum of thirty pounds, except in the following cases; (that is to say,)

(1) Where such goods or property shall have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ;

(2) Where such goods or property shall have been deposited expressly for safe custody with such innkeeper;

Provided always, that in the case of such deposit it shall be lawful for such innkeeper, if he think fit, to require, as a condition of his liability, that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same."

But the innkeeper is not to be entitled to the benefit of the Act—

(1) If he refuses to receive for safe custody any such goods, or if the guest, through any default of the innkeeper, is unable to deposit such goods.

(2) Unless he causes at least one copy of the first section of the Act, as above set out verbatim, printed in plain type, to be exhibited in a conspicuous part of the hall or entrance to the inn. The protection applies in respect of such goods only as shall be brought to the inn while such copy is exhibited.

Care must be taken to see that the copy of the section exhibited is correct, for the omission of a material word, e.g. the word "act", will deprive the innkeeper of its protection—*Spire v. Bacon* (1877).

A guest who is depositing goods "expressly for safe custody" must inform the innkeeper, in a reasonable and intelligible manner, that the deposit is for the safe custody of the article—merely saying "Keep that for me" is not enough; and the innkeeper who has properly exhibited a copy of section 1 of the Act will only be liable up to £30 for the loss of the goods unless some wilful act, default, or neglect on his part is proved —*O'Connor v. Grand National Hotel Company* (1898).

Something must be said or done by the guest that would convey to the innkeeper the fact that the goods were being deposited with him for safe custody; and the innkeeper must receive them into his charge with the intention of making himself liable for their safety—*Whitehouse v. Pickett* (1908).

The goods must be deposited with the innkeeper or with some person authorized to accept them. The "boots" of an hotel has no implied authority to receive such a deposit.

The Innkeeper's Lien

In return for the obligation that the law casts upon the innkeeper to receive travellers, it confers upon him a lien for his charges upon all property brought to the inn as the luggage of the guest and received by the innkeeper as such. It used to be thought that the lien extended to the person of the guest, but this is not now the law.

The lien depends on the relation of host and guest (as to which see page 4), and arises immediately that relation is established. Having once attached it would seem to continue though the relation has passed into that of host and boarder, but this has not been expressly decided.

It follows that where an innkeeper receives horses and a carriage to stand at livery, not in

his capacity of innkeeper but as a livery stable keeper, he has no lien; and the circumstance that the owner at a subsequent period takes occasional refreshment at the inn, or sends a friend to be lodged there at his charge, will make no difference.

But where a horse is left with an innkeeper as such, the person leaving it becomes a guest, though he does not stay in the house, by the mere fact of leaving the horse, and the innkeeper is entitled to his lien.

Nor is he entitled to a lien where the claim does not arise out of the relation of host and guest. Thus, where an innkeeper lends money to a guest on the security of goods which subsequently turn out to be stolen, he cannot exercise his lien for the money so advanced as against the true owner, for the transaction is merely a money-lending one—*Matsuda v. Waldorf Hotel Company* (1911).

The lien attaches to all the goods brought by the guest and accepted by the landlord as his luggage, even though such luggage is not strictly personal luggage and is such as the landlord was not bound to receive. The goods may be those of another, and may be known to be such by the innkeeper. Thus a commercial traveller employed by a firm who dealt in sewing machines went to stay at an inn; whilst there machines were sent to him by his employers in the ordinary course of business for the purpose of selling them to customers in the neighbourhood. Before the machines were sent, the innkeeper had express notice that they were the property of the employers; but he received them as the luggage of the traveller, who subsequently left without paying his bill. It was held that the innkeeper could enforce his lien as against the employers, and that it made no difference that the machines were sent to the inn after the traveller's arrival there—*Robins v. Gray* (1895).

On the other hand, the lien does not attach to goods which are not brought by the guest, but are sent to him subsequently for a special purpose under circumstances in which the innkeeper knows they are not his property. Thus, where a pianoforte was lent to a professional pianist whilst staying as a guest at an inn, the innkeeper, well knowing the circumstances, had no lien on it.

Not only may the goods be those of another, but they may even have been stolen from the true owner, or wrongfully seized under colour of legal process, or otherwise fraudulently obtained. But the innkeeper of course has no lien if he knows that the goods are stolen or wrongfully obtained, for he would then be himself a party to the wrongful act, and cannot insist on being recompensed at the expense of the true owner.

Where husband and wife stay as guests and credit is given to the husband, the lien may be exercised over the wife's separate property, because the innkeeper would be entitled, as we have seen, even if the husband had stolen the goods. "They (the innkeepers) knew of no distinction between the goods of the husband and wife, and could not enquire into their respective titles"—*Gordon v. Silber* (1890). The lien is a general lien, i.e. it is not limited to certain goods for the charges incurred in respect of those goods, e.g. it is not limited to a horse in respect of charges for its keep; a horse may be held for the whole of the guest's indebtedness.

Waiver of Lien

The existence of the lien depends on possession of the goods over which it is claimed.

The lien may be waived or lost—

1. By parting with the possession. The innkeeper does not part with the possession of horses which the owner takes out in the ordinary course to exercise; even if he takes them away for days to race meetings, provided he does so with the intention of returning. He parts with the possession, however, if he sells the goods without lawful authority, and if it should turn out that the goods are the property of a third party he will be liable to an action for damages for conversion.

2. By taking security for the debt of the guest under circumstances which are inconsistent with the existence or continuance of the lien; though the mere taking of security is not enough.

But the lien is not lost where the innkeeper has been induced by fraud to part with the possession.

3. By satisfaction of the debt. The payment must be in full satisfaction, for part payment does not destroy the lien. And a proper legal tender of the full amount is equivalent to payment—*Ratcliff v. Davies* (1610).

Power of Sale

By the common law the innkeeper has no power to sell the subject-matter of the lien, though by the special custom of the City of London such a right was recognized.

By the Innkeepers Act, 1878, a power of sale is conferred on the innkeeper, provided—

1. That he has had possession of the goods for six weeks without the debt being paid or satisfied.

2. That the debt for payment of which the sale is made is not greater, nor any debt other than the debt for which the goods could have been retained under the lien.

3. That an advertisement be inserted in one

London newspaper and one country newspaper circulating in the district where the goods have been deposited or left, containing a notice of the intended sale, a short description of the goods to be sold, and the name of the owner or person who deposited or left them if it be known.

The person selling under the Act must on demand pay to the person depositing or leaving the goods the surplus (if any) remaining after such sale, after having paid himself the amount of his debt together with the costs and expenses of the sale.

Liability to Billeting

Under the Army Act, 1881, keepers of victualling houses and other premises mentioned in the Act are liable to have officers, soldiers, and horses en route billeted on them. The Act extends to all inns, hotels, livery stables, or alehouses, also to the houses of sellers of wine by retail having on-licences, and persons selling brandy, spirits, strong waters, cider, or metheglin by retail.

The billeting is to be according to a list to be prepared by the constable in charge of the place. The officers and men should be distributed proportionately. In an emergency the houses liable are bound to receive all billeted on them, even if they have not accommodation for them in the ordinary way.

Under various statutes there is also a liability to provide billets for the militia under annual training, the yeomanry, and naval volunteers.

BOARDING AND REFRESHMENT HOUSES

Whether a house of entertainment is or is not an inn depends upon whether the keeper of the house holds himself out and professes to take in any traveller who requires accommodation or only approved guests. A large number of hotels make no such profession, and boarding houses and lodging houses of the ordinary type notoriously do not. They generally cater for a certain class of person, and reserve to themselves the right to refuse admission to any who do not appear to them suitable. "It is open to argument that the large London hotels do not hold themselves out as receiving customers according to the custom of England—at any rate such a matter would be a question of fact" —Lord Esher, M.R., in *Lamond v. Richard* (1897).

Since the relation of host and guest under the custom of the realm does not arise in these cases, the rights and duties of the parties depend on contract: the keeper of the house may make such charges as may be agreed on; he is not an insurer of the guests' goods but only a bailee; and he is not entitled to a lien on such goods for his charges, unless such lien is expressly provided for in the contract. And even where an inn receives a guest on a definite contract the relation is not that of host and guest but of boarding-house keeper and visitor, and the ordinary incidents do not attach—*Parker v. Flint* (1697).

It has been definitely decided that an ordinary London coffee-house is not an inn, nor is a restaurant, nor a refreshment bar attached to an hotel but having a separate entrance from the street; nor are boarding houses and lodging houses, between which there is no distinction in law.

A landlord, not being an innkeeper, is not liable for the loss of the goods of a visitor unless it be due to his negligence. Where no key was provided for the door of the bedroom nor for a chest of drawers in the room, though asked for by the visitor, and in consequence jewellery placed in a locked handbag was stolen by another visitor, who had been admitted as a boarder without references or introduction or enquiry concerning him, and who turned out to have been previously convicted of theft, it was held that this was evidence of negligence on the part of the landlord. "Seeing that the landlord carries on the business of a boarding-house keeper for reward," said Lord Justice Romer, "I think he is bound to carry on that business with reasonable care, having regard to the nature and normal conduct of the business as known to the guest, or as represented to the guest by him; and if by reason of a breach of that duty on his part the luggage is lost, I can see no reason why he should not be held liable for the loss to the guest"—*Scarborough v. Cosgrove* (1905).

Ordinary public-houses, beerhouses, and refreshment houses are not inns. They are under no obligation to serve persons entering them, being on the same footing in this respect as any other shop, and any person on the premises may be requested to leave if the owner does not wish him to remain on the premises.

It is a common error to suppose that a licensed house must remain open during the hours permitted by the licensing laws: unless the licence-holder has otherwise covenanted with his landlord, he may close the premises as he pleases. A practical objection to his doing so to any extent is that it would raise a presumption that the licence was not really necessary, and so jeopardize its renewal by the licensing justices.

AUTHORITY.—*Jelf and Hunt*, "Law of Innkeepers".

CHAPTER XIX

INSURANCE

Introductory—Life Insurance—Fire Insurance—Other Forms of Insurance—The Law of Insurance—National Insurance and Trade.

INTRODUCTORY

The three chief classes of Insurance are Marine, Life, and Fire. There are also a number of subsidiary classes, each of which resembles either Life or Fire Insurance in its attributes. Marine Insurance, the oldest form of insurance, is dealt with in Part VI.

The contract of insurance has been defined by Chief Justice Tindal as one in which a sum of money is paid by the assured in consideration of the insurers incurring the risk of paying a larger sum upon a given contingency. The contract is in essence a wager, and only differs from a wager properly so called because the law permits the one and not the other. The object of insurance is to eliminate from human affairs, so far as may be, the element of chance, by distributing losses amongst as many people as possible. A misfortune which would mean ruin to an individual is hardly felt if borne by a hundred or more. From this point of view, the Insurance Company is merely an agency for bringing together people who are willing to pool their losses, the Company's profit being a payment for this service. And in the long run it is not the insurers, but the insuring public, who bear the losses.

One of the marks of modern progress is the growth of insurance of every sort. Not only are the recognized classes increasing, but new classes are constantly springing up. Motor cars, employers' liability, and similar products of material and social advance no sooner come into existence than a new class of insurance is created to guard against the new risks. The progress of science has greatly reduced the element of chance in the individual life. A man is much less likely now to die young or to have his property destroyed by fire than he was in the Middle Ages. But the risk is only reduced, not eliminated, and this method of combating natural forces is designed to meet it. Calamities which cannot be avoided are guarded against in the way which causes the least amount of loss and inconvenience.

The total amount of business done by insurance companies in the United Kingdom is enormous, and is constantly increasing. In 1870 the number of life policies was 1,800,000 for sums assured of 338 millions sterling. In 1908 this total had risen to 31 million policies for sums assured of 1000 millions. In 1870 the funds of life offices in the United Kingdom were £90,800,000, and in 1908, £370,300,000, and the premium income in the same time had risen from 9 millions to 40 millions. The great increase in the number of policies is due to the spread of industrial insurance. In 1908 one company alone did 7 million pounds worth of new business of this class, a striking testimony to the habits of thrift developed of recent years in the working classes. It is calculated that the total amount of life and accident policies now on foot in the United Kingdom is equal to £24 per head of the population.

The trend of recent legislation is to bring insurance business more under the control of the State, although the amount of control in this country is less than in most foreign states. All life insurance companies have to deposit in Court a sum of £20,000 before commencing business, and by an Act passed in 1909 this duty is extended to all insurance companies starting business after the passing of the Act. By the same Act every insurance company must deposit its accounts annually at the Board of Trade, with a statement of its insurance

business, and in every fifth year must have a valuation of its liabilities made by a competent actuary.

The burdens placed upon employers by the Employers' Liability and Workmen's Compensation Acts have of recent years given rise to a new and very considerable branch of insurance business. The risk imposed by these acts is greater than was expected, and it is thought that the companies have hitherto incurred loss on this class of business, and there is consequently a tendency for the premiums to increase. But, whatever the premium, it is most advisable for every employer of labour to insure against this liability. Particularly is this so in the case of employers of domestic servants. The premium can never be a serious matter for anyone who can afford to keep a servant at all (usually for an indoor servant 2*s.* 6*d.* per annum), and a substantial claim against an employer who is not insured might be disastrous.

The direct intervention of the Government as an insurer has not been very successful. In 1864, Mr. Gladstone advocated a system of life insurance to be undertaken by the State, and an act was passed in that year enabling the Postmaster-General to issue policies not to exceed £100 through the post offices. Although a useful machinery has thus been established, the experiment has not justified the hopes of those who initiated it. A certain number of policies have been granted, but the amount insured is trifling compared with the sum deposited in the Post Office Savings Bank or to the business done by the Industrial Insurance Companies. This is said to be due to the lack of a systematic canvass. The number of persons who insure themselves voluntarily is very small compared to those who do so through persuasive agents.

The subject of compulsory insurance has become of great importance, and a National Insurance Act was passed through Parliament in 1911 by Mr. Lloyd George, the Chancellor of the Exchequer, to compel all employed persons whose remuneration does not exceed £160 per annum to insure against sickness and disability. A total sum of ninepence a week is to be collected in respect of each workman, of which sum fourpence is to be paid by the workman himself, threepence by his employer, and twopence by the State. From the fund so provided, the assured are to receive free medical attendance and a sum of ten shillings a week during sickness for a period of six months, and after that five shillings a week for so long as disablement continues. This scheme is borrowed from Germany, where compulsory insurance has existed for some years, on the basis of the workman, the employer, and the State all contributing to the cost. In Germany, where the police system is very different from our own, it is said that but little difficulty is experienced in its administration. In Britain the scheme is to be carried out through the agency of the existing Friendly Societies, which already have an extensive organization for dealing with sick pay for the working classes. Grave difficulties may be experienced, but it is clear that so large a scheme can only be carried out on a compulsory basis; and if it is successful there can be no doubt of its advantages to the class it is intended to benefit.

In this chapter it is proposed to deal in the first place with the constitution of the different forms of insurance office, then with matters common to all the forms of insurance, with the distinctive features of the different classes of insurance policies, and in fuller detail with the National Insurance Act.

LIFE INSURANCE

Nature of the Contract

Life insurance is a contract in which one party agrees to pay a given sum upon the death of a party named in the contract, in consideration of the payment by the other party of a smaller amount at regular intervals during that party's life.

The chief difference between life insurance and other forms of insurance, such as fire and marine, is that the latter are contracts of indemnity and the former is not. There is no limit to the amount for which a man can insure his own life. And although the amount he can insure on the life of another is affected by the rules as to insurable interest (see p. 15), yet even in such cases the contract is not one of indemnity. Accordingly, in a case where a father was entitled to £3000 if his son lived for twenty months, and he insured the son's life in that amount for two years, and the son lived for twenty months and then died within the two years, it was held that the father was entitled to recover the £3000. And for the same reason there is no subrogation in life insurance. Accordingly, where the assured was killed in a railway accident, and the persons entitled to the insurance money had recovered damages from the railway company, it was held that the office could not take credit for such payments. And the same principle has been applied in the case of accident insurance, which is also not a contract of indemnity.

History of Life Insurance

The first traces of life insurance as we now know it are found in the sixteenth century. At that time insurances were undertaken by individual underwriters, usually for short periods and to guard against special risks, and the premiums charged were very high. A hundred years later annuity schemes were first formed. In these the members contributed sums for the benefit of the dependents of such of them as died within each year. But such schemes can only be successful where correct data as to the average duration of life are available, and where the number of persons insured is sufficiently large to ensure that the average statistics shall be maintained. And, neither of these elements being present, most of the earlier schemes ended disastrously.

In 1706 the Amicable Society was founded by Royal Charter, and this is the first large general scheme of insurance. In this society everyone paid a fixed amount per annum irrespective of age or health. Members had to be over twelve years of age and under forty-five, and at the end of each year a certain sum was distributed amongst the families of those who had died in that year.

During the eighteenth century scientific investigation into the duration of life had begun, and in 1756 the Equitable Society was founded and carried on insurance business for the first time on a scientific basis. This society charged a different premium according to the age, health, occupation, &c., of the "life", and insured for a fixed sum. It invested its capital and provided to some extent for a distribution of profits, and was in all essentials the prototype of the modern office.

Thereafter the number of insurance offices increased rapidly, until in 1844 there were over 140. As was to be expected, this new business had opened the way for a number of fraudulent, or at any rate over-sanguine, schemes. Accordingly the Joint Stock Companies Act of that year dealt specifically with insurance companies and compelled them to make annual returns of their assets and liabilities. This Act proved insufficient, and was followed by the promotion of a number of unsound companies. In 1870 the Life Assurance Companies Act was passed, which forms the basis of the present law. That Act provides that every new life insurance company must deposit in Court £20,000. Companies must keep their receipts from life insurance business separate from their other receipts. Annual accounts and periodical valuations must be published. Companies can only amalgamate or transfer their business with the consent of the Court, and of a certain proportion of the policy holders. Provision is made for the winding-up of insolvent companies. And a very special power is given to the Court in cases of insolvency, and as an alternative to winding-up, to reduce the amount for which the company is liable on its contracts of insurance.

The Assurance Companies Act, 1909, amends the Act of 1870, and makes provision for a fuller disclosure of accounts, &c., and enacts that a valuation of the liabilities of the company shall be made once in every five years by an actuary, and that the deposit of £20,000 shall be kept up.

Constitution of a Life Insurance Office

In the United Kingdom the business of life insurance is almost exclusively in the hands of large companies, although there is nothing in law to prevent an individual carrying on insurance business. There are three kinds of insurance company: (1) joint stock companies, with a capital subscribed by shareholders, amongst whom the profit is divided; (2) mutual companies, of which the assured are the members, dividing the profits amongst themselves; and (3) mixed companies, in which the capital is subscribed by shareholders, but which divide a certain proportion of their profits amongst the assured. Of these three classes the first is very rare, and the third the most common.

An insurance company may be constituted by royal charter or by registration under the Companies Acts, and, except for the special provisions as to winding-up, is carried on in the same way as an ordinary limited liability company. At one time there were a number of unincorporated companies constituted by a deed of settlement. These were merely partnerships, and questions arose as to whether policy holders who received bonuses were liable as partners. It was ultimately decided that they were not. And, as was pointed out in one of the cases, a policy holder who receives a bonus is not really sharing in profits. He is merely receiving back the surplus of his premium.

The System of Life Insurance

Life insurance may be divided into two main branches: (1) Where the sum insured is bound to be payable at some future date, and (2) where the sum is only payable in a certain contingency.

The former class is of course far the more important, and is subdivided as follows:—

1. *Whole-term Insurance.*—These are the ordinary contracts to pay a certain sum on the death of the assured. They are generally, but not always, made with bonus additions; and the con-

sideration is the payment of an annual premium by the assured.

2. *Endowment Insurance.*—These are policies which become fully paid up after a certain term of years. The sum insured is payable on the person named in the policy dying, or so soon as the policy is fully paid up—whichever happens first. This form of insurance has become extremely popular. The premiums charged are naturally somewhat higher than in the case of whole-term assurances. But the alternative offered is very attractive, and much has been done by the companies in the last few years to increase this attractiveness. These modern variations usually take the form of giving the assured an option of what benefit he will take when his policy becomes paid up—thus in some companies the assured may either take out the sum assured, or may receive an annuity for life, or a paid-up policy for a larger sum, or a small annuity plus a policy, or some other combination of these benefits.

3. *Insurance on Joint Lives.*—In these more than one life is included in the policy, and the money is payable when any one of them fails.

The second class of insurance is designed to guard against special contingencies or risks, and the sum insured is only payable if the contingency occurs. Thus, it is usual for people who have incurred expense in preparing for a coronation celebration to insure the life of the monarch until the coronation is over. And in this class are included survivorship insurances, in which the sum insured is payable at the death of A if that should happen in the lifetime of B, but not otherwise. By means of this class of policy one who is a creditor of a man with "expectations" can guard himself from loss if the debtor predeceases his testator.

The carrying on of a successful insurance business depends on an accurate calculation of the proper rate of premium. It is now known that, although nothing is more uncertain than the duration of a single life, yet the average duration of a large number of lives can be foretold with approximate certainty. These average durations have been set out in a number of Tables of Mortality, compiled from the observation and experience of generations, and it is on one or other of these tables that all the offices transact their business.

The first of these tables which in any way approached to accuracy was the Northampton Table, compiled in 1780 from a study of the registers in Northampton Parish Church. This was followed shortly after by the Carlisle Table, and both these tables were used a great deal for many years. The Mortality Table of the Equitable Society formed the basis of tables used by many offices; and later the experience of a number of offices was combined into the Seventeen Offices Experience Tables. In 1869 the tables of the Institute of Actuaries were published, on which nearly all modern calculations are based. These are compiled from the experience of twenty offices of upwards of 150,000 lives.

From the data of these tables, the "net" premiums are calculated. The net premium is the amount necessary to enable the office to pay the sum insured without loss, if the "life" lives to the average age indicated by the table. To this has to be added a margin for contingencies, and a further sum for expenses and profits; and the total thus reached is the premium actually paid by the assured, and is called the "loaded" premium.

The tables of mortality are based on observations of average lives, not merely on healthy ones. Nevertheless the insurance offices find it necessary to exercise a careful selection in the choice of lives, and either to charge a higher rate for unsound people or to reject them altogether. For, naturally, it is the weak rather than the strong who seek insurance, and unless care were exercised the health of the persons insured would be below the average. In America the average life of persons insured is higher than in England, and this is said to be due to the fact that insurances there are more largely procured through the solicitations of agents. The agents induce a number of healthy people to insure who would otherwise not bother about it, and the average is thereby raised.

By means of this careful selection it is found that during the early years of insurance the death rate of persons insured is lower than that of the general population. But after some years it becomes higher. This is said to be due to the selection exercised against the office by the assured, some of the healthy lives dropping their policies, while the unhealthy ones keep them alive at all hazards.

Division of Surplus

There are various ways in which a surplus may arise: (1) From the earnings being greater than is anticipated; (2) from the death-rate being lower; (3) from the loading of the premiums being greater than is necessary. The usual method of dealing with surplus is to divide it amongst the policy holders as "bonus" at periodical distributions. Bonuses are sometimes paid in cash, sometimes added to the sum insured, sometimes applied to reduce the premiums, and sometimes applied to limit the term for which premiums are payable.

The method of apportionment amongst different classes of policy holders varies in different offices.

In some it is in proportion to the amount of premium paid, in some to the loading of the premium, in others to the reserve value of the policy, in others to the difference between the accumulated premiums and the reserve value of the policy. These different methods favour different classes of policy holders, some being more advantageous to young and some to old lives, and in selecting an office the method of distributing bonus is one of the matters to be borne in mind by the assured.

Surrender Value

The premiums paid by a policy holder form the fund from which his insurance money will be paid. If after some years he decides not to go on paying premiums, that fund is no longer required. It is therefore common in such cases for the offices to refund a share of it to the assured. He does not get it all back, for two reasons: firstly, because it is nearly always the "good lives" who give up their policies, and secondly, because the withdrawal is entirely at the option of the assured—the office have no power to end the contract, and have to stick to their bad bargains, and take the risk of the assured ending the good ones.

An alternative to "surrender value" is sometimes adopted by the introduction of a "non-forfeiture" clause into the policy. In such cases, a paid-up policy is given to the assured equal to the amount of the policy which he would have been entitled to if the premiums paid were spread over a period of years equal to his "expectation" of life.

Investment

The business of the actuary is not ended when he has determined the average duration of life. He has also to calculate the average rate of interest which his company can earn over a long period of years; and this is an almost equally difficult problem. Every company, to be solvent, must possess (either in reserve funds or by the value of its contracts) assets equal to the present value of all its policies, and most careful calculations are needed to discover what this sum is. The earning power of money has, as is well known, declined of recent years, and many companies have reduced the rate on which they base their business. The usual rate in Britain is 3 to 3½ per cent.

The assets of a company of course consist largely or even chiefly of future premiums, which will become payable year by year by the assured. But the companies can rely with confidence on receiving those sums; there need be no allowance for bad debts; for if the premium is not paid the policy lapses, or is surrendered, and the company makes a profit.

FIRE INSURANCE

History

As an organized system fire insurance is first heard of in the middle of the seventeenth century, shortly after the Fire of London. The first regular office was opened in 1681. Until 1909 the legislature had not in any way interfered with this business. Any number of people might carry it on in any way they pleased, without publishing any accounts, or depositing any money. But any company starting fire insurance business for the first time after the Act of 1909 came into operation has to deposit £20,000 in Court; and certain accounts and valuations have to be published by all companies.

Nature of the Contract

The essential feature of fire insurance is that it is a contract of indemnity. No one may make a profit on his insurance; and the company will only pay the amount which the assured can prove he has lost. Although primarily intended to distribute amongst as many people as possible the loss caused by fire, this form of insurance also has the indirect effect of lessening the risk of fire. For the experience of the offices shows what class of structure is peculiarly liable to be burnt, and what precautions are most likely to prove effective. Buildings which do not conform to a reasonable standard of safety have to pay a higher premium. (See Part I, Chapter V.) There is thus a powerful inducement to the assured to make their buildings as safe as possible.

Constitution of a Fire Office

Mutual insurance against fire has not as a whole been successful. If a particular trade or body of people combine for such a purpose, it has generally been found that the area of their business is not wide enough; there are not sufficient members to bear the losses that occur. And the business is now chiefly in the hands of joint-stock companies.

The risks of fire insurance are not capable of such exact or scientific calculation as are those of life insurance. It must always be more or less a matter of chance how many houses are injured by fire in a given town in a given year, and the fire

offices are forced by competition to ask the lowest premium they can safely accept. There is thus always some risk of loss in this business. But the continued prosperity of a fire office is not of the same paramount public importance as that of a life office; for their contracts are only for a year. If at the end of a year it is found that the premiums charged are not large enough to cover the losses, they can be altered.

The rate of premium varies with the risk. In England the ordinary rate for a dwelling house in a town (which is considered the safest form of property) is about 1s. 6d. per £100 insured. Above these there are quoted "hazardous", "extra hazardous", and "special" rates, ranging up to as much as 7 per cent. And the problem of fixing a rate for a particular property is often a very difficult one. Not only has the trade carried on to be considered, but the conformation of the buildings, the presence of dangerous goods, and the character of the occupier are all material.

Gradually it has been realized that the only practical method is to pool the experiences of the various offices. And from this practice there has sprung up what is called the tariff system. By agreement the various offices settle the proper rate to be charged for each class of risk, and bind themselves not to charge less. So that in practice there is a universal rate for all normal risks, although that rate is constantly changing, as new contrivances for lessening danger are invented and adopted, and as further experience directs. This prevention of "cutting" is a good thing for the public as well as for the offices. It is a guarantee of solvency.

At one time the offices not only insured against fires, but also undertook to put them out. Each of the large companies had its own fire brigade, and this is said to be the origin of the custom of affixing metal signs on houses by the company insuring them. They did not wish to waste the efforts of their firemen in putting out a fire against which they had not insured. Gradually the public inconvenience of having a number of private brigades was felt, and in 1866 the companies made over their establishments to the various local authorities, by whom they have since been carried on.

The risks of a fire office are greatly reduced by the almost universal practice of reinsurance, by which the company passes on to other companies any share of the risk which it does not wish to bear. Many companies exist for the sole purpose of taking reinsurances. All the law as to the contract of insurance applies with equal force to the contract of reinsurance.

OTHER FORMS OF INSURANCE

With the exception of accident policies, and the new class of insurance against weather, all the less-important forms of insurance resemble fire insurance in being contracts of indemnity.

Accident Insurance

Accident insurance is not a contract of indemnity, and therefore where the assured is injured in a railway accident, and recovers damages against the railway company, he does not have to give credit to the insurers for the sum recovered. Accident insurance was the first form to be developed outside the standard classes, and is first found as a form of insurance against risks on railway journeys. It has now been greatly extended, and policies are issued entitling the assured to "sick pay" during disablement arising from any form of disease or accident, and these have become very popular. In some cases the policies are both life and accident—paying a lump sum on death, or a weekly payment during disablement.

The two most characteristic modern developments are Fidelity and Employers' Liability Insurance.

Fidelity Insurance

Fidelity Insurance, which had its origin in America, is to a large extent replacing in modern business transactions the giving of a bond by a private surety. It is chiefly used as a protection against the dishonesty of servants, but the performance of contracts is also guaranteed. It was for some time doubted whether these contracts were insurance or suretyship; but the Courts have now decided that they are insurance contracts, and that therefore the rule requiring the utmost good faith applies to them. They are undoubtedly contracts of great public utility, and much business of this class is done, both by the insurance companies and by Lloyd's underwriters. (See also Chapter VIII of this Part.)

Employers' Liability Insurance

Employers' Liability Insurance was started almost as soon as the Employers' Liability Act of 1880 was passed. Its importance was increased by the passing of the first Workmen's Compensation Act in 1897, and the Act of 1906 has given

it an enormous impetus. The 1906 Act extends to practically all workmen benefits which were formerly restricted to a few trades considered peculiarly dangerous. There was a rush to insure against this new liability, and a great mass of new business has been done. The usual form of policy, at any rate in the case of domestic servants, is wider than a mere insurance against liabilities under the Acts; it usually covers risk of loss through the illness of servants in circumstances not amounting to an accident. (See also Chapter X of this Part.)

Weather Insurance, &c.

A new form of insurance has been elaborated for insuring against the effects of rain. The policies are called "Pluvius" policies, and the system of insurance is that, in return for a weekly premium, a fixed sum is paid for each day in the week in which the rainfall exceeds a certain fraction of an inch, in the place in which for the time being the assured is residing. The official rain gauge of the place in question is accepted as evidence of the rainfall, and the rates vary according to the weather reputation of the place concerned. There are several different classes of such policies, some insuring against one wet day a week, and some against two; some against moderate rainfall, and others only against exceptional storms. The policies are not indemnities against loss; they are primarily intended for holidaymakers, to compensate them for loss of enjoyment on their holidays. But they are also capable of a wide development for business purposes amongst the class who cater for outdoor amusements.

Other classes of insurance which have attained some magnitude are insurance for the purpose of death duties—an increasing business—plate glass, motor car, third-party risks, and burglary insurance. None of these call for any special mention here.

All classes of risks are underwritten at Lloyd's (see Vol. I, p. 184) by insurance brokers often at rates below those quoted by the offices. But as the most important class of work at Lloyd's is Marine Insurance, further reference is made to it in another place. (See Part VI.)

THE LAW OF INSURANCE

Insurable Interest

It has always been the object of the legislature to prevent insurance from degenerating into a form of gambling. Although the uses of the contract are obvious, it was soon perceived that it was liable to grave abuse. During the earlier part of the eighteenth century, insurances on the lives of public men were a recognized means of gambling, and many thousands of pounds were staked on the lives of the Young Pretender, of Walpole, and other well-known people, the assured being persons who would not be in any way pecuniarily affected by the "dropping of the life". To remedy this mischief, the "Gambling Act", as it is popularly called, was passed in 1774. This Act is still in force, and it is by virtue of it that the assured must have an insurable interest in the risk. The first section provides that no insurance shall be made on the life of any person, or on any event whatever, wherein the person for whose benefit the policy shall be made shall have no interest; and every such insurance is void. The second section enacts that the name of every person for whose benefit a policy is made shall be inserted in the policy; and the third that, even where the assured has an interest, he shall not recover from the insurer a greater sum than the value of such interest.

There has been much discussion as to what constitutes an insurable interest. It has been decided that every man has an insurable interest for an indefinite amount in his own life, for his estate can thus be guarded from the loss it will incur through the cessation of his earnings; and as these future earnings cannot be limited or fixed in any way, so neither can the amount insured. Therefore, in the most common form of life insurance, where a man insures his own life for the benefit of his family, no question of insurable interest can arise.

The interest must be a pecuniary one; it must be shown that the assured will lose money by the accruing of the risk. And therefore a husband cannot insure his wife's life unless he will lose money by her death, or except to the extent to which her death will involve him in expense, e.g. the amount of funeral expenses. But a wife may now, by virtue of the Married Women's Property Act, 1882, effect a policy on her own or her husband's life for her separate use. And the same Act provides that a policy effected by a husband on his own life, or by a wife on her husband's or her own life, and declared to be for the benefit of the wife or husband as the case may be, or of their children, shall create a trust in favour of the objects therein mentioned, and shall not form part of the estate of

the assured. Accordingly, if a husband has insured in this way, and dies insolvent, his widow gets the insurance money in spite of the claims of creditors.

A creditor has an insurable interest in the life of his debtor, and so has a surety in that of his principal, but it has been decided that a debtor has not such an interest in that of his creditor, although the latter may have promised not to enforce the debt in his lifetime. And a parent cannot insure his child's life unless he has a pecuniary interest in it.

A trustee may insure the subject-matter of his trust, although of course anything he recovers from the insurer is subject to the trust, and must be paid to the beneficiaries.

The insurable interest must exist at the time of effecting the policy. If it afterwards ceases the policy is not thereby avoided.

The interest must be in the assured; and so where a life policy is assigned, it is not necessary for the assignee to have an insurable interest.

Good Faith

It is the duty of a person seeking to effect an insurance to display the utmost good faith. In the ordinary case the facts which make the insurer's risk greater or less are exclusively in the knowledge of the assured, and the law requires that he shall place these facts unreservedly at the service of the insurer. It is his duty not only to answer questions truthfully, but also to volunteer anything within his knowledge which may be material to the risk; and it is not for him to decide the materiality. If the Court thinks that information was withheld which was in fact material to the risk, the policy will be voidable, even if the assured honestly believed that the matter withheld was not material. It is only facts within the knowledge of the assured which he must disclose; he has no duty to make enquiries.

Material Representations

In the ordinary policy of life insurance, the facts which the assured is required to communicate are set out in a document called the declaration, in which the assured has to state his age, business, state of health, other policies, &c., and the declaration is always made part of the policy, and any misstatement or concealment in it is enough to make the policy voidable.

It is to be noted that the materiality of a representation is not affected by subsequent events. It has the effect of making the contract voidable in any event. So that if, in the case of a life policy, death results from some altogether different cause, quite unconnected with the misrepresentation, the insurers need not pay.

It makes no difference whether the representation is oral or in writing. If a statement is true at the time it is made, but subsequent events render it untrue before the policy is issued, it is the duty of the proposer to communicate this change to the insurer. In life insurance it has been held that statements as to former illnesses are material. In fire insurance the description of the premises is material. If the property is misdescribed, the policy does not begin to run at all. The assured cannot escape the consequences of concealment by employing an agent to effect the insurance and keeping that agent in ignorance of the facts. He is bound to disclose all material facts to the agent, and the agent must communicate them to the insurer. Where a life policy is issued on a life other than the assured's, and the "life" gives information as to his health, &c., to the office, he is looked on as an agent for the assured, and his misstatements make the policy voidable. If a misrepresentation is due to the act of an agent of the company, it does not avoid the policy. In proposals of life insurance, the office often ask to be referred to a medical man, and to a private friend of the assured, to obtain information as to his habits and history. In such cases the referees are not the agents of the assured, and misstatements by them do not make the policy voidable. But if the misstatements were fraudulent, the referee would lay himself open to an action. Where the office ask to be referred to the usual medical attendant, and the name of a doctor who has only seen the patient once is given, the misstatement has been held to be sufficiently material to make the policy voidable.

In the ordinary case where a policy is avoided because of misrepresentation, the amounts paid as premium can be recovered; but if the misrepresentation was fraudulent, the premiums are forfeited. And if, as is not unusual, the policy provides that, in the event of an untrue statement, all money paid on the policy shall be forfeited, nothing can be recovered. The assured need not mention matters which are within the knowledge of the insurer.

The same principles apply to reinsurance, and consequently where the reinsuring company stated that they retained part of the risk, whereas in fact they had reinsured it all, the policy was avoided.

The effect of misrepresentation is to make the policy voidable at the option of the insurer. In

law, the insurers have an election as to whether they will go on with the policy or not, and if they once signify their election, either verbally or by conduct, it is binding. So where there was a misrepresentation, and after knowledge of it had reached the company they accepted further premiums, it was held that they had waived their right to avoid, and that the policy was still on foot.

The Premium

The premium is the price for which the insurer undertakes his risk. Payment of the premium is not in law a condition precedent to the completion of the contract. But the usual practice is for insurers to stipulate that the contract shall not take effect till the premium is paid. Where a premium falls due after discovery of a breach of condition, an acceptance of the premium by the office is an election to keep the policy alive, and the breach is thereby waived.

Where the insurance is made under the mutual belief that the assurer has an insurable interest, and it turns out that he never had an interest, the premium is repayable, as the risk was never run. And in the same way, where a policy is avoided through no fault of the assured the premium is repayable. But once the risk has been run, the premium cannot be recovered. And this is so even if the loss occurs through some cause which does not render the insurer liable. For instance, life policies usually provide that nothing is payable if the "life" commits suicide. If the "life" does commit suicide, the premiums cannot be recovered, as the policy was actually on foot as an insurance against death from other causes.

Premiums must be paid punctually. Where it is stipulated that they must be paid by a certain date, the policy is voidable if the premium is not paid on that date, but the offices may, and usually do, waive their right of forfeiture when the premium is tendered and the risk has not become a claim during the interval.

It is not the duty of the office to demand the premium or to notify the assured that it is due. The omission of such notification does not take away from the insurers their right to avoid the policy. But where the office had always sent notice when the premium fell due, and then on a particular occasion failed to do so, it was held that they could not rely on the non-payment of that premium in an action on the policy, as they had led the assured to believe that he would receive notice.

A certain number of days beyond the date of payment are, in most policies, allowed to the assured in which to pay the premium. These are called "days of grace". Some difficulty arises if the loss occurs during the days of grace. It has been decided that during that time the policy is in suspense until the parties decide whether or not to renew it, and that, until the assured has offered to pay, the insurance is not on foot, and the office are not liable for a loss. But in a later case, where a life policy contained a condition that the policy should be void if at the death of the "life" any premium should be more than thirty days in arrear, and the "life" died during the thirty days, and the premium was paid after his death but within the thirty days, it was held that the policy was prevented from lapsing by the payment.

The Risk

It is of course of the utmost importance that the exact nature of the risk undertaken by the office should be fixed. The business of insurance can only be carried on if the insurer knows exactly the degree of risk he runs; and this is the reason of the rule, dealt with above, that every material fact must be disclosed by the assured, so that the insurer may know what it is he is insuring against.

The commencement of the risk does not depend on the issue of the policy. In the ordinary case the risk begins from the payment of the first premium, and if the loss occurs between that date and the issue of the policy, the insurers are liable. But if the loss occurs before the payment of the first premium (or the giving credit for it, which comes to the same thing), then there is never any risk at all—it is a certainty from the commencement of the contract—and therefore the insurers are not bound.

Most policies are time policies and are on foot between fixed dates; but voyage policies are common in marine insurance, and are occasionally issued for the carriage of goods by land. In such cases the risk runs during the transit, and it would be a question for a jury to decide whether a loss occurred during a voyage or during a deviation from it. (See Part VI.)

A policy for a year is not put an end to by payment of a loss not sufficient to exhaust the amount insured. The policy continues on foot until the whole amount is paid or the year is ended.

In fire insurance the property to be insured must be most accurately described in order to fix the risk; for the risk, and consequently the rate charged, vary greatly with regard to the situation, construction, and use of a building. Thus if a fire has occurred next door to a house which it is proposed to insure, that is a fact affecting the risk which must be disclosed. Higher

rates are charged where dangerous trades are carried on in a building, and for insuring wooden houses than stone ones, and for houses in a terrace than for those standing alone, and on account of the special conditions.

In the case of goods, they are usually insured while they are in a named building, and removal from the building ends the insurance. So important is it that the locality of goods should be accurately described, that in a case where tobacco was insured as being in No. 189 in a certain street, and in fact it was in No. 187, the policy was avoided.

Fire policies usually contain a clause restricting assignment, for the character of the assured is an element to be considered in fixing the risk. If he is a person who has had many fires, he would be charged a higher premium, or, in an extreme case, would not be able to insure at all.

In many cases it is extremely difficult to say whether a fire has occurred or not, and whether the fire is the cause of the loss. Thus in cases where an earthquake is followed by fire, the offices would only have to pay on damage caused by the fire. It has been held that to constitute "fire" there must be actual ignition. So that where sugar was spoilt by great heat, but without actual burning, this was held not to be damage by fire. And damage by smoke from a fireplace, or concussion from a neighbouring explosion, is not within the insurance, unless specially provided for. But if there is fire it does not matter what the cause is—whether it is accident or arson. And it is not necessary that the actual article insured should burn. It is enough if it is injured as a result of the fire, e.g. by being drenched with water by the fire brigade, or by being thrown from a window in an attempt to save it. And it has been held that goods stolen during the confusion following on a fire are covered by the policy. But the assured must do his best to save his goods; if he lets them burn when he could easily carry them off, he cannot recover. In such a case the damage is as much due to his own neglect as to the fire.

In the case of life policies the risk insured against (apart from express proviso) is death from any cause other than suicide, execution by the law, or a crime committed by the assured. It is against public policy to uphold the claim in any of the latter cases. So that if the assured is killed in a duel, or is hanged, or commits suicide, the office need not pay. But this reasoning does not apply where a man takes his life while he is insane. He commits no wrong, for he does not know what he is about; and in such cases the policy is good. But where a policy contained a proviso that it should be void if the assured died by his own hand, this was held to cover a case of suicide during insanity. And if the assured feloniously kills a person whose life he has insured, it has been held that he cannot recover.

Life Policies

Life policies usually take the form of a deed under seal; but an ordinary contract in writing is clearly sufficient, and it is thought, though the point is not free from doubt, that an oral policy might be valid—see *Newman v. Belsten* (1884). The policy is usually binding from the date of the acceptance of the first premium, although in certain exceptional cases the company have been held liable where the premium has not been paid, on the ground that they have given credit for it, or on the ground of waiver.

The questions which have to be answered with a proposal for life assurance are generally as follows:—

Age, residence, occupation, &c. Have you resided out of Europe? Have you previously been or are you at present engaged in any profession or occupation other than that stated above? [Have you any prospect or intention of going beyond the limits of Europe, or of being engaged in any business or occupation other than the above?] Do you engage in aviation, ballooning, or any description of travelling in the air? Have you ever had [certain named diseases?] Have any of your Parents, Brothers, Sisters, or near relatives died of Consumption? Are you now in good health? Are your habits of life strictly sober and temperate? Have they always been so? For what illnesses have you consulted a medical man? Full particulars, with the names and addresses of all the doctors consulted, and of ordinary medical attendant. Has your life been proposed, or is it now being proposed, to any other company or companies? Was your life accepted upon the ordinary terms? Has your life ever been accepted at an increased premium? Has a proposal of your life ever been declined or withdrawn? Are there any other circumstances connected with your past or present state of health, or habits of life, which render an Assurance on your life more than usually hazardous? Name, residence, and occupation of two friends, not medical men, well acquainted with your health and habits of living.

Sum to be Assured £ ..... Term of Assurance ..... Under Table ..... With or Without Profits ..... Premiums to be paid Yearly, or Half-Yearly? ..... If with Profits, in Increase of the Sum Assured, or Reduction of the Premium? .....

When these questions have been answered, the Declaration must be filled up in the following terms:—

I, the proposer above-named, do solemnly and sincerely declare that the above-written Answers in reply to the above Questions are true and complete; and I agree that this Proposal and Declaration, and the Declaration to be made by me before the Medical Examiner, shall be the basis of the Contract between me and the Royal Exchange Assurance.

Dated the ..... day of ..... 19 .....

Witness ..... (Signature) .....

Form 1

FORM OF LIFE POLICY

A.D. 1720. A.D. 1720.

ROYAL EXCHANGE ASSURANCE CORPORATION

Life Policy

CHIEF OFFICE:—ROYAL EXCHANGE, LONDON, E.C.

Whole-World Life Policy. *No.* . . . . . *With Profits.*

THIS POLICY OF ASSURANCE WITNESSETH, *That whereas* the Person named in the Schedule hereto (hereinafter called the Assured), having paid to the CORPORATION of the ROYAL EXCHANGE ASSURANCE the first Premium on this Policy, and having delivered at the Office of the said Corporation a Proposal and Declaration, signed by the Assured, dated the . day of . . , 19 , which said Proposal and Declaration are the basis of the Assurance hereby made:—

KNOW ALL MEN BY THESE PRESENTS, That in case of the death of the Assured on or before the day of next, or in case the Assured shall pay at the Office of the said Corporation on or before the last mentioned day and at the expiration of every succeeding . calendar months until the death of the Assured the Sum or Premium mentioned in the said Schedule, then the Capital Stock, Estates, and Securities of the said Corporation alone shall be subject and liable to make good and satisfy unto the Executors, Administrators, or Assigns of the Assured, immediately after good and sufficient proof shall be made to the satisfaction of the said Corporation of the death of the Assured, and of the title of the person or persons claiming the benefit of this Policy, the Sum Assured mentioned in the said Schedule.

PROVIDED ALWAYS, That this Policy shall be entitled to profits according to the Regulations of the Corporation, such profits to be applied in the manner specified in the said Proposal, and the determination thereof by the Governors and Directors, in all cases, to be taken as conclusive by the Assured, or the Executors, Administrators, or Assigns of the Assured.

PROVIDED FURTHER, That if the said Proposal or Declaration shall be found to contain any false or untrue averment, then, in any such case, this Policy shall cease and be void to all intents and purposes whatsoever, and all Premiums or Monies which shall have been paid in respect thereof shall be forfeited to the use of the said Corporation, and that this Policy shall at all times and under all circumstances be subject to the Privileges and Conditions indorsed hereon

THE SCHEDULE ABOVE REFERRED TO

Name, Address, and Description of the Assured	Premium	The Sum Assured.

IN WITNESS WHEREOF the said Corporation have caused their Common Seal to be hereunto affixed, the ..... day of ...., 19.....

By Order of the Court of Directors,

Secretary.

THE FOLLOWING ARE THE PRIVILEGES AND CONDITIONS UPON AND SUBJECT TO WHICH THIS POLICY IS MADE:—

1. This Policy shall not be in force until the first Premium thereon shall have been actually paid.

2. This Policy shall remain in force provided the Premium be paid within thirty days from the date whereon it falls due, and if the Assured shall die within the said thirty days the Premium shall (if it has not been previously paid) be deducted from the Sum Assured. If the Premium be not paid within the said thirty days this Policy shall lapse. Provided always that it may be revived within twelve months after the expiration of the said thirty days, on payment of the Premium or Premiums in arrear, together with Interest thereon, from the date whereon they respectively became due, at the rate of £5 per cent per annum, and in case the said Policy shall not have attained a surrender value to the amount of at least one year's Premium, according to the regulations of the Corporation, on the production of medical evidence satisfactory to the Corporation of the Assured being then in good health.

3. This Policy is free from all restrictions as to foreign residence or travel, and as to profession or occupation.

4. If the Assured shall, within thirteen calendar months from the date of this Policy, and whether being sane or insane, die by his or her own act, or by duelling, or by the hands of Justice, this Policy shall be void except that the Corporation shall be liable thereon to any person or persons who shall have a *bonâ fide* pecuniary interest therein by assignment, or legal, or equitable lien to the extent of such interest, and provided that notice thereof, in writing, shall have been received by the Corporation at least one Calendar Month prior to the date of death.

5. Before the Corporation shall be liable to pay any money under this Policy, proof satisfactory to the Corporation must be given of the age of the Assured, and upon such proof being at any time given, the age will be admitted by a memorandum signed by the Secretary, Actuary, or other principal officer of the Corporation.

6. If any alteration, erasure, or addition to this Policy be made without the consent of the Corporation, this Policy shall be absolutely void.

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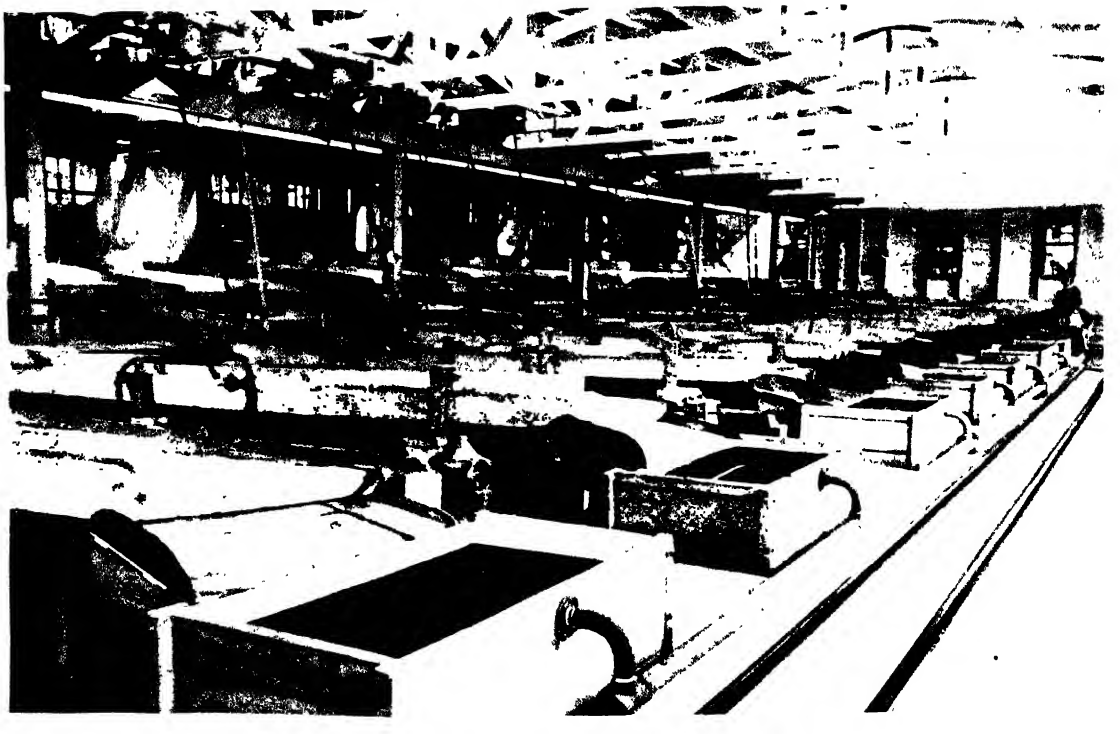
The Conditions of a Life Policy

Nearly all policies start with a condition that the policy depends upon the truth of all statements made by the assured, and on the disclosure of all material facts. This is no more than a statement of the common law. A second condition deals with the days of grace, providing usually that a policy shall not become void if the premium is paid within fifteen or thirty days, as the case may be, of its being due. This condition is necessary; if it is not inserted the policy is void if the premium is not paid on the due day. The companies usually waive this right if the assured continues alive, being only too anxious to retain business. But if the assured died a day or two after the premium was due it is clear that they would not have to pay. As has already been pointed out (p. 17), if the assured dies during the days of grace, and the premium is then paid by his representatives, the policy may or may not be good, accordingly as it is worded—see *Stuart v. Freeman* (1903). To meet a possible hardship, a condition is often inserted to the effect that, if the "life" dies during the days of grace, and before the premium is paid, the amount of the overdue premium is to be deducted from the sum assured.

Another usual condition in policies on the assured's life avoids the policy if death occurs while the assured is on the high seas, unless he has given notice of his intention of going there and has received permission from the directors. Some old policies were avoided by the mere "going" to sea of the assured, but now it is usually only his death on the sea which gives the company this right.

Until recently it was usual to have a condition avoiding the policy if the life should go beyond Europe; but owing to modern conditions of travel this is now usually omitted, or only applies in the case of certain notoriously unhealthy places. Another condition avoids the policy if the assured enters the military or naval service without the consent of the directors, or becomes a sailor, or takes part in warfare. And policies usually contain a condition that they shall be void if the age of the assured is incorrectly stated, and requiring satisfactory evidence of the age before payment, unless the same is admitted at the time of making the policy and endorsed thereon. This endorsement should always be obtained, if possible, at the time of making the contract, as it is frequently extremely difficult after death to prove the date of birth.

Nearly all policies are voidable if the assured should commit suicide. But recently there has been a movement in the opposite direction, and a certain number of offices do not avoid policies for suicide, provided it does not take place within five years, or some other stated time, of the issue of the policy. And in any case, and even under the common law, the condition only applies in the case of persons making insurances on their own lives and retaining the beneficial interest therein. As against assignees the policy is good. And the condition (and the common law rule) has no



BATTERY AT A GOLD MINE, MURCHISON, WESTERN AUSTRALIA

application in the case of an insurance on the life of another person.

Finally it is common for policies to contain a condition that all disputes shall be submitted to arbitration, and such condition will in general be binding upon the parties.

Stamps on a Life Policy

By the provisions of the Stamp Act, 1891, life policies have to pay an *ad valorem* stamp duty (see Chapter XXVIII of this Part) varying with the amount assured, but working out at about 1s. per £100. Assignments of policies must be stamped in the same way as any other conveyance by sale or mortgage. In the case of a reinsurance, it is the practice to charge a stamp duty of 10s. if the policy is a deed under seal, and 5s. in other cases. Stringent penalties are imposed on people who deal with unstamped policies.

Dealings with Life Policies

Policies frequently form the subject of mortgages, assignments, &c., and are a simple and convenient method of raising money in certain cases.

In legal language a policy is a chose in action, that is to say, it is not a right of property in possession, but is merely a right to sue for a sum of money on a certain contingency happening. By the common law such a right was not assignable, and actions by the assignee had to be brought in the name of the assignor. But now by virtue of the Policies of Assurance Act, 1867, and the Judicature Act, 1873, assignments are allowed and the assignee can sue in his own name. Accordingly, policies are now freely dealt with, being mortgaged, assigned, and settled. But the assignment is always subject to equities; that is to say, the assignor cannot give a better title than he himself has, and the company can always set up against the assignee any defence which would have been good against the assignor.

A short and simple form of assignment is scheduled to the Act of 1867. Assignments are usually by deed, but this is not necessary, although advisable; and, except in the case of marriage settlements, there is nothing in the law to prevent a verbal assignment.

Notice of the assignment should always be given promptly to the insurance company. If this is not done, the company can discharge themselves by paying the assignor, and the assignee may be defrauded. And where there are several successive mortgages of a policy, the priority of the mortgages is determined according to the date of notice, not according to the date on which the money is advanced. So strictly is this rule enforced that in one case where there were two mortgagees, and one got possession of the policy, but did not give notice, and the other gave notice but did not get possession, the latter was entitled to priority. And if no notice is given, the office might itself lend money to the assured on the policy after the mortgage, and would then be entitled to priority over the mortgagee. In the absence of any special stipulation, an assignment of the policy would carry with it a right to all future bonuses.

If a policy is deposited to secure a debt, this does not operate as an assignment, but merely as a lien. So that the creditor cannot sue the company on the policy, nor can he sell the policy or deal with it in any way. His only right is to refuse to give it up until his debt has been paid. Notice of the deposit should be given to the office. The deposit may be either to secure an existing debt, or to secure advances to be made from time to time. If the creditor pays the premiums on the policy in order to keep it alive, it has been held that he has a lien for them on the policy and need not give it up until they have been repaid to him.

Insurance companies are usually willing to lend on their own policies, if a considerable amount has been paid on them. If it is desired to raise money on a life interest from an insurance company, it is the usual practice to take out a policy on the life of the life tenant and add it to the security.

Mortgages of policies must be distinguished from cases where a creditor insures his debtor's life. In the latter case the policy belongs to the creditor, and he need not account for any excess of the insurance money over the debt. But very slight evidence will be required to raise a presumption that the creditor took out the policy as trustee for the debtor. Thus in one case where the creditor had debited the debtor with the amount of the premiums in his accounts, it was held that this showed an intention that the debtor should be the real assured, and the creditor, after paying off his own debt and the amounts of the premiums, had to pay over the balance of the insurance money to the debtor's representatives.

Fire Policies

It is not necessary that a fire policy should be in any special form. Any binding contract will do. But the ordinary form is as follows:—

Form 2

Incorporated A.D. 1720

Premium to ..... £ : : Policy No. . ...

Annual Premium - - - £ : : Sum Insured £.. . . ' ....

Payable at ....

By the CORPORATION of the ROYAL EXCHANGE ASSURANCE, for Assuring Houses and other Buildings, Goods, and Ships from Fire; and also for the Assurance of Lives

THIS INSTRUMENT OR POLICY OF ASSURANCE WITNESSETH, That . . . .
....
hereinafter called the Insured, having paid or agreed to pay to the CORPORATION of the ROYAL EXCHANGE ASSURANCE, of London, hereinafter called the Corporation, the Sum of ... . for insuring against loss or damage by fire, as hereinafter mentioned, the Property hereinafter described in the sum or several sums following, namely:—

On Household and Personal Effects of every description (excepting Money, Securities, Stamps, Documents, Manuscripts, and Books of Account), the property of the Insured, his Family, and Servants (in case of loss no one Picture, Print, or Engraving to be deemed of greater value than £), all in private use,

MEMO.—In the event of temporary removal of Household and Personal Effects to any private Dwelling-house, Lodging-house, Hotel, Club, Bank, or Safe Deposit (not being part of a Furniture Depository) in the United Kingdom, this Policy will extend to cover the same (if and so far as they are not otherwise insured) for a sum not exceeding £ at all such places, which sum (or the value of the property removed, if less) shall cease to apply to the contents of the Insured's Dwelling-house aforesaid during the period of temporary removal.

THE CORPORATION HEREBY AGREE WITH THE INSURED (but subject to the Conditions printed on the back hereof, which are to be taken as part of this Policy) that the Capital Stock, Estates, and Securities of the Corporation only shall be liable to pay or make good unto the Insured any loss or damage by fire to the property above described, which shall or may happen between the ... . day of .... One thousand Nine hundred and . .. . and Four o'clock in the afternoon of the . ... day of . . . . One thousand Nine hundred and .. .., or before Four o'clock in the afternoon of the last day of any subsequent period in respect of which the Insured shall pay, and the Corporation shall accept, the sum required for the renewal of this Insurance, to an amount not exceeding in respect of the matter or matters above specified the sum or sums set opposite thereto respectively, and not exceeding in the whole the sum of ....

IN WITNESS whereof the Corporation have caused their Common Seal to be hereunto affixed, the .....• . day of ... ... , in the Year of our Lord One thousand Nine hundred and . . . .

By Order of the Court of Directors,

Examined ..... *Secretary.*

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On the back are printed the conditions incorporated in the policy.

Conditions in Fire Policies

The first condition is usually one avoiding the policy altogether in the event of any material misdescription of the property. As in the case of life policies, this is merely a statement of the common-law rule. The importance of seeing that the property is accurately described cannot be too strongly impressed on the assured. The omission of such a fact as that a special form of stove was used, or that there had been a fire next door, would be quite sufficient to make the policy voidable. And there can be little doubt that a great number of the policies now on foot are voidable for misdescription of the property. It may well be that the company will pay on them all the same; it would be bad business not to do so. But if for other reasons the insurers wish to dispute the policy, it gives them an opportunity to do so.

Another usual condition gives the company the right to avoid the policy if anything takes place which increases the danger of fire to the property insured. Without this a man who had insured his private house might subsequently turn it into a gunpowder factory. The ordinary arrangement is that in the event of a change of risk the company have the option of renewing at a higher premium or of ending the insurance.

A usual condition is one excepting from the insurance certain classes of goods and particular risks which it is not desirable to insure. These usually include (1) gunpowder and other explosives; (2) objects of great value; such as jewellery, pictures, and china; (3) objects whose value is indeterminable, such as documents, title deeds, negotiable instruments, plans, and the like; (4) goods of which the assured is only the trustee; (5) damage caused by war, riots, earthquakes, undue heating and similar matters which are akin to, but not intended to be included in, damage by fire.

The next condition is that the policy becomes void if the assured assigns his interest in the property (not in the policy), unless such assignment is on death or by operation of law or with the assent of the company.

Another condition always inserted requires that notice of the loss should be given to the company. The notice has to be in writing and has usually to be delivered within a fortnight of the loss occurring, and it must set out in detail a list of the articles destroyed and their value and the amount claimed in respect thereof. It is usual to provide that if the claim or any part of it is fraudulent all the rights of the assured shall be forfeited. In such a case he cannot recover even on those parts of the claim which are honest, nor can he recover his premiums.

It is now almost invariable for companies to insert a condition reserving to themselves the right of restoring the property damaged instead of paying the amount of the loss. This is a useful protection against exaggerated claims; but it may sometimes involve the company in difficulties, for it has been held that once they have elected to reinstate they are bound to do so, even if the cost turns out to be much greater than had been anticipated. Accordingly, where a company had elected to reinstate a building, and after they had started to do so the building became dangerous, and they were compelled by the local authority to remove it, it was decided that that was no defence to an action for not reinstating. And the election to pay, and not to reinstate, is equally binding and final. By virtue of an Act passed in 1774 the insurers are obliged to expend the insurance money in reinstating, quite apart from conditions in the policy, if they are requested to do so by the assured or by the owner of the property.

The next noteworthy condition gives power to the company to sell or dispose of any salvage or any property taken possession of or removed by their authority. The "salvage" is the term applied to the damaged property remaining after the fire, and the question of who is entitled to it has given rise to some difficulty. Where there is no "average" condition in the policy, and the owner is underinsured, so that the insurance money plus the salvage does not cover his loss, the salvage will belong to him. When the owner is fully insured, the salvage belongs to the company. In "average" policies, if the property is not totally destroyed, the assured only recovers such proportion of his loss as the sum insured bears to the whole value of the property. In such a case he is considered his own insurer for the balance, and he shares in the salvage in the same proportion as if he were another underwriter with a policy equal to the uninsured part of the property It is the duty of the assured to do all he can to save his property and to deal with the salvage so that the least possible amount of loss may happen to it, and it is thought that the company might have a claim against him for any damage they suffered through his negligence in failing to do so.

Finally, policies always contain a condition referring all disputes to arbitration (see p. 26).

Stamps on Fire Policies

Fire policies must bear a stamp of one penny, and unless they are stamped are not admissible in evidence, except in criminal cases, until a penalty of £10 has been paid. The Stamp Act, 1891, by Section 100, provides that every person who (1) receives or takes credit for any premium or consideration for any insurance, other than a sea insurance, and does not within one month after receiving or taking credit for such premium or consideration make out and execute a duly stamped policy of insurance; or (2) makes, executes, or delivers out, or pays or allows in account, or agrees to pay or allow in account any money upon or in respect of any policy, other than a policy of sea insurance, which is not duly stamped, shall incur a fine of £20.

Different Kinds of Fire Policy

There are several different kinds of policy which it is necessary to consider.

Policies may be either "blanket" or "specific" policies. A blanket policy covers a number of different classes of property—for instance, a warehouse

and the machinery and goods in it—a specific policy covers only one class—e.g. the goods only. Where there is a loss of, say, part of the goods and part of the machinery very difficult questions arise as to the proportion in which the loss should be borne between the two insurers. These are dealt with on the next page.

A third form of policy, called a "floating" policy, covers goods of a particular kind which may from time to time during the period of the insurance be upon the assured's premises. Such policies are commonly taken out by wharfingers, who have on their hands a constantly changing quantity of goods belonging to other people. In such cases the goods have sometimes been insured by their owners as well, and the correct method of adjusting the loss between the two policies has been laid down in the well-known case of *The North British Company v. The London, Liverpool, and Globe Company* (1876). Shortly, the result of that case is that the liability of the insurers to each other is the same as that of the assured would have been if there were no policies, so that it is necessary to inquire in each case whether the loss is due to a cause which would have made the wharfinger liable to the merchant.

A distinction is also drawn between valued and non-valued policies. In a valued policy the property insured is valued at the time of insuring, so that no further enquiries have to be made after the fire, at any rate in the case of a total loss. Such policies are very rare in England, but are common in America, and in some States are compulsory. And in all countries they are usual in marine insurance. In the latter case they are useful, but in fire insurance the expense involved in valuing masses of property, on the bulk of which no claim will ever accrue, is so great that valued policies have never become general.

Lastly, we have to consider the effect of an average clause in a policy. The usual form of such a clause is as follows: "Whenever a sum insured is declared to be subject to average, if the property covered thereby shall at the breaking out of any fire be collectively of greater value than such sum insured, then the assured shall be considered as being his own insurer for the difference, and shall bear a rateable share of the loss." Accordingly, if property worth £1000 is insured for £600 subject to average, and a loss by fire of £600 takes place, the assured can only recover $\frac{600}{1000}$ of £600, which equals £360, from the insurance company, and is deemed his own insurer for the balance. Most marine policies are subject to average, but the condition is not common in English fire policies. It is necessary to know the value of the whole property insured, which is often almost impossible; and it is not a popular form of insurance with the public, who like to feel they are completely protected up to the amount mentioned in the policy.

Subrogation

It frequently happens that a man whose property has been injured by fire has a right of action against some third party to whose negligence the fire is due. A common example of this is where fire is caused through sparks from railway engines, and the railway company have not taken proper precautions to diminish the risk of damage from this source. In these cases, if the owner of the property is insured, and has recovered the amount of his loss from the insurers, the latter are entitled to stand in his place as regards his rights against the negligent parties and to bring an action in his name against them. This right is called subrogation, and is introduced into insurance law by analogy with the corresponding rules in the case of sureties. The assured has a choice of remedies. If he brings his action against the wrongdoers, the insurers escape altogether. If he recovers from the insurers, they can then bring the action in his name. In practice the assured always adopts the latter course, which saves him the expense and risks of an action. But in either case it is on the wrongdoer that the loss finally falls. And from the same reasoning it follows that if the assured has recovered both from the wrongdoers and the insurers, the latter can recover back from him the second payment.

In the case of *The North British Company v. The London, Liverpol, and Globe* (1876), it was decided that subrogation applies in cases of contract as well as of tort. So that where both bailor and bailee had insured, the loss fell on that insurer whose assured was primarily liable.

Insurers are only subrogated to the legal rights of their assured. If therefore the assured receives any benefit from the generosity of friends, or from some moral claim not amounting to a legal right, the insurers cannot share in it. And where the assured is himself the wrongdoer, no question of subrogation can arise; for the right of the insurers is only to stand in the place of the assured, who of course cannot sue himself. Accordingly, where the sparks from engines had damaged property belonging to the railway company the insurers had to pay in full.

In cases where the property destroyed is not fully insured, and there is a right of action against a wrongdoer, the assured, who has recovered his insurance money and then sues the wrongdoer, sues for himself as to the amount necessary to indemnify him against his loss, and as to the

balance as trustee for the insurers. And it has been decided that in such cases the assured is the *dominus litis*; that is to say, it is his action and he is the person to decide what steps shall be taken, whether an offer of settlement shall be accepted, and so forth — see *Commercial Union v. Lister* (1874). But he must act honestly and not collude with the defendant to defeat the rights of the insurers.

Contribution

Contribution must be distinguished from subrogation. It arises where two insurers have both insured the same property, and is the right of that one of them who has paid the assured to recover a proportionate part of the loss from the other. Where the sum of the two insurances is less than the loss there can be no question of contribution, and each insurer must pay in full. But where the sum of the two insurances exceeds the loss there is what is called double insurance, and the loss must be borne in the proportion which each insurer stood to lose over the property injured. This rule does not in any way affect the assured. He can sue either insurer and recover his whole loss, and cannot be met by a defence that other insurers ought to contribute. It is only between themselves that insurers can raise this point.

Very difficult questions of adjustment occur in settling the amount of contribution, particularly where specific and blanket policies cover the same property. In the simple case the rule is quite easy to apply. For instance, if company A insures a house for £2000, and company B insures it for £1000, and a fire causes damage to the extent of £600, it is easy to see that A should pay £400 and B £200. But suppose a case where a house and the furniture in it are insured by A for £2000, the house alone is insured by B for £1000, and the furniture alone by C for £800, and a fire causes damage to the house of £600 and to the furniture of £300, how is the loss to be divided? Neither the practice of fire offices nor the rule of law can be looked on as settled—see *American Surety Company v. Wrightson* (1910). But the best rule appears to be this: For this purpose specific and blanket policies must be treated as both covering the risk to the full amount insured. Thus in the instance given the house is insured for £2000 by A and £1000 by B, and of the loss of £600 on the house, A pays £400 and B £200. There is thus £1600 of A left, and the loss of £300 on the furniture must be borne between A and C in the proportion which £1600 bears to £800, so that A pays £200 and C £100. Therefore in the aggregate A pays £600, B £200, and C £100. This is on the assumption that policy A is first applied to reduce the greater loss, that on the house. If it is first applied to the loss on the furniture the result is different. But it is thought that the method suggested is the one applied by most of the offices. Where the same property is covered by average policies and non-average polices the result is extraordinarily complicated.

Policies only contribute when they both insure the same interest. If both mortgagor and mortgagee insure their interest in a property in a total amount exceeding the loss, this is not a case of double insurance, and each insurer must indemnify his own assured.

Claims and Adjustment

On the happening of the loss the policy becomes a claim. The assured must give prompt notice to the insurers of the loss, and must give particulars of the amount he claims. Most policies make prompt notice a condition of liability, and this is but just. For if a long time has elapsed it is extremely difficult to get evidence of the extent of the loss. In some policies it is a condition that the assured shall produce his business books as evidence of his loss. And in all cases the absence of the books is looked on with suspicion by the arbitrators.

The true measure of the loss is always the value of the property destroyed. Accordingly, in the case of buildings, if an old building is destroyed the amount payable to the assured is not the cost of putting up a new building, but the actual value of the old building as it stood. In the case of small claims the offices frequently waive this right, and pay the value of a new article, partly for the sake of advertisement. But the rule is strictly applied in the case of a substantial claim, and rightly so; for, as is pointed out by Mr. Bunyon, if the offices paid more than was actually lost, they would be putting a premium on fires, and would soon cease to be a public benefit. Machinery is treated in the same way as buildings, and the assured cannot compel the office to give a new and up-to-date machine in place of his old and obsolete one.

In the case of goods, if they are in the hands of the manufacturers, the amount payable is the cost of the raw materials plus the cost of production. But this is qualified by the rule that it is their value to the assured which must be considered; if the goods are old and unsaleable, their value at the time of the fire may be less than the cost price. In the case of goods in the hands of retailers the cost price is usually paid; though here again evidence is admissible that the goods have depreciated

in value; and on the other hand, if the market price has gone up, the assured may get more than he gave for the goods.

Arbitration

All fire policies contain arbitration clauses. These vary somewhat in terms, some compelling the parties to submit all questions in dispute to arbitration, others dealing only with questions of amount. The latter form seems the more reasonable, as if a charge of fraud is made, the assured should not be deprived of an opportunity of clearing his character in public. But it is seldom that such questions arise. Nearly all disputes between fire offices and their assured are as to the value of the property destroyed, and on such matters it is clearly unnecessary to incur the expense of an action. And apart from questions of expense, it seems clear that an arbitrator, who can visit the property and who may be a person conversant with the trade of the assured, is better fitted than are a judge and jury to assess the amount of the loss.

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NATIONAL INSURANCE AND TRADE

BY L. G. CHIOZZA MONEY, M.P., F.S.S.

The enactment of the National Insurance Act of 1911, throwing as it does new burdens upon British employers, is of considerable importance and interest to every business man.

Sickness

The thing most apparent upon a cursory examination of the measure from the point of view of the trader is the considerable actual contribution demanded from employers. As is generally known, the Health Insurance contributions are derived from three sources: (1) the employer, (2) the employed, and (3) the State. The last of these is an expression of the former two, and of such other persons as are neither employers nor employed.

The normal contributions payable are as follows: Each employed male pays 4*d.* per week; each employed female pays 3*d.* per week; the employer of either male or female pays 3*d.* per week in respect of each of his employees. When the wages of adults are below 15*s.* per week, the contributions of the workpeople are reduced and the contributions of the employers are increased.

The State does not make a direct weekly contribution, but contributes to the National Insurance Fund by meeting, for men, two-ninths, and for women, one-fourth of the cost of all the benefits paid out, and of the cost of their local administration. For the purposes of our present consideration it is sufficiently accurate to regard the State's contribution as equivalent to the payment of a round 2*d.* per week for each employed person, so that we may put the total weekly contribution in respect of a man at 9*d.*, and that for a woman at 8*d.*

The contributions are clearly set out in the following table, which shows the varied rates for adults who earn less than 15*s.* per week.

WEEKLY CONTRIBUTIONS IN RESPECT OF A MALE WORKER

Age (at entry) and Wage.	Weekly Contribution			State's Share of Cost of Benefits [1]	Total.
	By Employee	By Employer	By State.		
	Pence.	Pence.	Pence.	Pence	Pence.
For boys, 16 to 21 years: all wages	4	3	—	2	9
For men over 21 years at entry:			0		
Wages over 2*s.* 6*d.* a day	4	3	—	2	9
„ 2*s.* to 2*s.* 6*d.* a day ...	3	4	—	2	9
„ 1*s.* 6*d.* to 2*s.* a day ...	1	5	1	2	9
„ not over 1*s.* 6*d.* a day ..	0	6	1	2	9

[1] This is not a contribution of 2*d.* per week in respect of each worker, but a contribution of 2*d.* for each 9*d.* *paid out in benefits.*

WEEKLY CONTRIBUTIONS IN RESPECT OF A FEMALE WORKER

Age (at entry) and Wage	Weekly Contribution			State's Share of Cost of Benefits.[1]	Total.
	By Employee.	By Employer.	By State.		
	Pence.	Pence.	Pence.	Pence	Pence.
For girls, 16 to 21 years: all wages	3	3	—	2	8
For women over 21 years at entry:					
Wages over 2*s.* 6*d.* a day	3	3	—	2	8
„ 2*s.* to 2*s.* 6*d.* a day	3	3	—	2	8
„ 1*s.* 6*d.* to 2*s.* a day	1	4	1	2	8
„ not over 1*s.* 6*d.* a day	0	5	1	2	8

[1] This is not a contribution of 2*d* per week in respect of each worker, but a contribution of 2*d* for each 8*d* *paid out in benefits.*

If we neglect the varied contributions for those earning under 15*s.* a week, and take the number of employed contributors as 13,000,000, we see that British employers will be called upon for thirteen million times 13*s.* per annum, or £8,450,000 a year. This sum is slightly increased on the one hand by extra payment for low-paid workers, and decreased on the other hand by the fact that unemployment reduces the number of threepences to be paid in a year by about 5 per cent. We may put the employers' liability in the first year of the Act's full operation at about £8,000,000.

The wages bill of the country in 1912 was about £700,000,000, and the £8,000,000 therefore represents a compulsory addition of 1·14 per cent to British wages.

It has been pointed out by many employers that the burden of this new social legislation, to which employers contribute a larger share than the general taxpayer, demands a larger social contribution from an employer of labour than from, say, a solicitor or barrister, or land or other property owner, of similar income. It is argued that A, a manufacturer with 500 men, making, say, £3000 a year, is called upon to pay over £200 a year, while B, a man with an unearned income of £3000 a year, has merely to pay, say, £10 a year in respect of a small retinue of menials. It is impossible not to admit that there is some force in this contention; on the other hand, it must also be admitted that the employer who is directly responsible for using up part of the health and strength of a workman has a special responsibility in respect of him, whether in regard to sickness or to accident. It may be argued that when a man loses his life in a mine he loses his life in the general service of the community as well as in the particular service of his employer, and that, therefore, not the employer alone should compensate the dependents. Nevertheless, in all countries it has been recognized that the employer has a special responsibility, and he alone has been made liable.

In regard to sickness, the National Insurance Act makes a concession to employers in this respect by making a general levy upon the taxpayer. The employer is also a taxpayer, and therefore also contributes through taxation; nevertheless, the general levy does help him by bringing in as contributors all persons, whether employers or not, to swell the insurance fund. The provisions of the National Insurance Act are therefore a sort of compromise on the point. The employer is made a special contributor, and the taxpayer is called in to pay a certain share.

There is, of course, room for great difference of honest opinion as to what the respective shares of the employer, the employed, and the taxpayer should be under such an arrangement. Any decision must necessarily be arbitrary, for there is no immutable principle to guide statesmen in the matter. Different nations vary considerably in their treatment of the matter. In Germany, for example, the sickness contributions are furnished as to one-third by the employer and as to two-thirds by the workman, while the taxpayer contributes nothing at all; the Invalidity and Old Age Pensions are contributed by employers, employed, and the taxpayer. Here we have the provisions already described for sickness and invalidity insurance, while Old Age Pensions are non-contributory and paid for out of the proceeds of general taxation.

Effect upon Trade

The effect of the National Insurance upon trade opens up most interesting considerations.

A new cost is thrown upon the employer when the State demands from him weekly contributions in respect of his workpeople. When the State compels the employer to pay 3*d.* a week for each

employee, the State *in effect compels the employer to raise wages by 3d. a week.*

If, then, we desire to investigate the effect upon production of an employer's insurance contribution, we have to consider it in the light of a rise in wage. It is a very superficial view of the subject to assume that the employer does not get value for each threepence that he pays. If the threepence were an ordinary rise in wages, it is clear that the purchasing power of the workpeople of the United Kingdom would be increased, other things being equal, by threepence a week, and that that increase in purchasing power would *pro tanto* raise the standard of living of the workpeople. Careful study of the effect of rising wages shows that they produce an increased efficiency which reacts upon production and leads to an increased output per unit of wage. All experience shows, whether in the United Kingdom or in foreign countries, that *labour cost is not the same thing as wages cost*, and that the badly paid labourer is dearly purchased.

As has been well remarked by Professor Marshall (*Principles of Economics*): "It is only in our own generation that a careful study has begun to be made of the effects that high wages have in increasing the efficiency, not only of those who receive them, but also of their children and grandchildren. . . . The application of the comparative method of study to the industrial problems of different countries of the old and new worlds is forcing constantly more and more attention to the fact that highly paid labour is generally efficient, and therefore not dear labour, a fact which, though it is more full of hope for the future of the human race than any other that is known to us, will be found to exercise a very complicating influence on the theory of distribution."

If, then, increased wages yield in the long run a better output per unit of labour cost, it must certainly be true that an increased contribution is a good investment for the employer. As has already been said, the employers' contribution is really an increase of wage, but it has to be added that it is an increase of wage which the employee is *compelled to spend on the means of efficiency.* Not only so, but the employee is compelled by the State to spend fourpence of his own per week, as well as the threepence of the employer, upon the scheme of insurance. That insurance operates to give the workman medical treatment in time of sickness, and maintenance while he is rendered by sickness incapable of work. If, then, an ordinary increase of wage is shown by experience to produce greater efficiency, *a fortiori* must an insurance contribution do so. Who can doubt that if such a scheme had been in operation during the past twenty years, the average health and the average efficiency of British workmen would be greater than at the present moment?

The views of German employers entirely corroborate this opinion.

In the official White Paper 5679 of 1911 we have a most interesting consensus of opinions by German captains of industry on the long experience of social insurance in the Fatherland, and almost universally it is held that German efficiency has been sensibly influenced by the insurance laws. Here are some brief extracts from the opinions expressed:—

Chemical Industry; a master employing 2300 workpeople:

"The Insurance Laws have decidedly improved the conditions of life of the workers and increased their efficiency. While before the introduction of compulsory sickness insurance the workers only called in medical assistance in serious and protracted illness, they do this now immediately on the occurrence of sickness, and in this way many serious illnesses are averted. . . . The costs occasioned by these laws are borne as willingly as any taxes."

Chemical Industry; a master employing 7500 workpeople:

"The obligatory systems of insurance have unquestionably influenced the standard of life and the efficiency of the workers favourably, since these are protected against want in any of the eventualities contemplated. In general, it may be assumed that the cost of insurance is borne willingly by the employers. . . . From the standpoint of the employers, these laws are remunerative to the extent that the efficiency of the workers is increased, and that without the insurance laws —unless the State or the communes took over the burden which they entail—correspondingly higher wages would have to be paid."

Paper and Wood-pulp Industry; a master employing 5000 workpeople:

"The Insurance Laws have a decidedly favourable influence on the condition of life and also the efficiency of our workpeople. The laws and the provision which they make for the workers are directly advantageous to employers."

Glass Industry: a master employing 1000 workpeople.

"The Insurance Laws have undoubtedly improved the condition of the working classes in a high degree. . . . The cost of insurance is willingly borne by the employers."

Rubber Manufacture; a master employing 800 workpeople:

"In our opinion the Insurance Laws have advantageously influenced the standard of life and the efficiency of the German workers. . . . It may be affirmed that German employers are not merely satisfied with the high costs of insurance, but pay them gladly in the interests of the workpeople, knowing that the latter are as a consequence protected against need and anxiety."

Tobacco Industry; Herr Schmidt, President of the German Tobacco Manufacturers' Association:

"In any event, it is certain that it is hardly possible to speak of these insurance contributions as constituting any special burden on industry, for if you regard the sum so paid, not as a percentage of wages, but of the year's turnover, it does not exceed ½ per cent, so that in calculating the cost of goods—that is, the extent of the expense to be allowed for—that is so small a sum that it is neither right nor just to make a noise about it. . . . Speaking honestly, as one employer to another, I am of opinion that the investment in these insurance contributions is not a bad one."

Electrical and General Engineering Industry:

"The operation of the German Insurance legislation has, in course of time, greatly improved the condition of the workers and also increased their efficiency, and has had, in general, a very beneficent influence. The contributions in their present extent are borne willingly by the employers."

Iron and Steel Industry:

"The Insurance Laws have influenced the condition of life of the working classes in that they are free from anxiety by reason of sickness, infirmity, and accidents. It cannot be denied that in many cases the workman's feeling of confidence increases his productive power and his efficiency."

Effect on the Poor Law

Another point of no small importance to employers is the effect of Insurance Laws upon the Poor Law. On this head the following opinions of German Poor Law administrators may be quoted:—

Berlin. Population, 2,070,695.

"The Public Poor Funds have unquestionably been relieved by the Insurance Laws. . . . It cannot be denied that the General Insurance legislation has exerted an enormous influence on the public care of the poor in every direction. In consequence of the Sickness Insurance Law in particular all industrial workpeople, and to a large extent the members of their families as well, have been lifted above the necessity of seeking poor relief in time of sickness. To this extent the relief afforded to the Poor Funds has been absolute."

Frankfort-on-Main. Population, 414,598.

"The laws have unquestionably afforded direct and permanent relief to the Poor Funds, for in nearly all cases in which benefits are paid under the Accident and Infirmity Insurance Laws poor relief would otherwise have been necessary, while without sickness insurance the lives of the parents would have been shortened and the number of orphans maintained by the Poor Law—which since 1883 has declined absolutely—would have increased at least in proportion to the population."

Elberfeld. Population, 170,118.

"The Workmen's Insurance Laws without question relieve the Public Poor Funds both directly and permanently."

Charlottenburg. Population, 305,181.

"The Workmen's Insurance Laws as a whole have directly and permanently relieved the Poor Law."

It is surely better to prevent disease than to pay for its evil effects. It is surely better to prevent the dragging down into destitution of workpeople and their families than to allow the degradation to continue and to pay through the Poor Law for its wastage. It has been credibly estimated that half of the outdoor pauperism in the United Kingdom is due to sickness. Much more than an Insurance Law is, of course, needed to deal with so grave a problem, but whether we consider the matter *a priori*, or whether we judge by German experience, we have the best of reasons to hope that the employers' sickness contributions will not only give us greater efficiency, but have a considerable influence upon destitution and pauperism.

Unemployment

It remains to consider the second section of the National Insurance Act. In this case, as in the case of the Health Insurance, the compulsory contributions are shared between the employer, the employed, and the State, and the actual contributions are as follows:—

CONTRIBUTIONS TO THE UNEMPLOYMENT INSURANCE

(In Pence)

Age.	Employer.	Employee.	State	Total.
	Per Week.	Per Week	Per Week.	Per Week.
For boys, 16 to 18	1	1	$0\frac{2}{3}$	$2\frac{2}{3}$
For males over 18:				
(*a*) When employment is for a week or for more than 2 days ...	$2\frac{1}{2}$	$2\frac{1}{2}$	$1\frac{2}{3}$	$6\frac{2}{3}$
	Per Day.	Per Day.	Per Day.	Per Day
(*b*) When employment is for 2 days or less	1	1	$0\frac{2}{3}$	$0\frac{2}{3}$

The compulsory Unemployment Insurance applies to the engineering and building groups of trades only, covering about 2,500,000 workers engaged in the building, contracting, shipbuilding, mechanical engineering, ironfounding, vehicle-making, and saw-milling trades.

Employers who employ their men regularly can demand the return of one-third of their contributions at the end of the year, and it is estimated that the average employers' contributions will be only 7*s.* 10*d.* per annum. That means that employers in the trades referred to will have to find a sum rather less than £1,000,000 a year. As taxpayers they also find a fraction of the State's contribution, but the larger part of the State's contribution will obviously be found by the general body of taxpayers.

The considerations which have been advanced as to the effect of Health Insurance payments upon output apply with equal force to the Unemployment scheme. The unemployed workman will receive a benefit of 7*s.* a week towards his maintenance, and the effect of this must be to help to maintain his efficiency and to prevent his destitution. The employer, in effect, helps to ensure an efficiency which inures to his own advantage, and to prevent a destitution which would react upon industry and upon society. Both Health Insurance and Unemployment Insurance may be summed up as Efficiency Insurance; and, considered as a price paid for additional efficiency, compulsory insurance contributions may be economically regarded as in the same category as royalty payments, i.e. as *costs which reduce costs.*

CHAPTER XX

THE LAND LAWS

Introductory—Freehold and Copyhold—Freehold Interests—Personal Interests in Land—Trust Estates—Ownership in Community—Ownership in Expectancy—Ownership on Condition—Transfer of Land—Title by Possession—Rights over Land of Others—By-laws and Restrictive Conditions—The Land Laws of Scotland.

INTRODUCTORY

In England property is divided into realty and personalty, a division which does not quite correspond to the distinction observed in international law between immovables and movables. (See Chapter XXVII of this Part.) Real property comprises land and interests in land of indefinite duration, and also a few special classes of property. Personalty comprises interests in land of a leasehold character and goods and chattels, including choses in action, e.g. debts, stocks and shares, &c. The term "land" is inclusive, and a lake is described as land covered by water.

The old division of realty was into lands, tenements, and hereditaments. Land includes everything upon the land which is part of it, as a house or other building; tenements meant anything capable of being held by common-law tenure, and hereditaments property which on the death of the owner intestate went to his heir. Into the origin of the distinction between realty and personalty we need not enter in this outline of the laws relating to land. There is also a "mixed" class, consisting of property which may be realty or personalty according as it is situated. Standing timber passes with the land, but if cut is personalty; and crops, unless severed, pass with a devise of the land. Fixtures are noticed elsewhere (Chapter IX of this Part). Title deeds go with the inheritance, but are personalty if lodged as security. By special custom certain special property may go to the heir as an heirloom. But the term heirloom is more usually applied to articles settled to devolve with the inheritance, such as pictures, jewels.

A lease for a term however long is personal and not real property, being of definite duration, while on the other hand an estate for life, however short a period that may actually be, is real property because there is no definite period to it.

Ownership of real property differs from ownership of personal property in many important respects. Ownership of real property is not theoretically absolute according to English law, hence the word "tenure", which means holding of some superior power. Practically, however, the owner of a fee-simple is absolute owner, as the limitations on such ownership are purely technical. Further distinctions are that the ownership of land may be divided up into successive interests, while the ownership of goods at common law does not admit of this division, and the rules of succession to realty and personalty have always differed.

The ownership of lands was also regarded as a duty as well as a right, and a duty for the discharge of which there must always be somebody in existence. The heir was therefore not only entitled but bound to succeed. While the owner of goods can abandon at any time his property, the owner of land must retain the ownership until someone else acquires it.

In the ordinary way the owner of the surface is owner of everything below and above the land, but there are exceptions, and this presumption can be rebutted. Minerals may be separately owned, and other rights may be possessed by persons not the owners of the soil.

FREEHOLD AND COPYHOLD

Land, as we have seen, is the subject of tenure, and there are various kinds of tenure still known to the law, although freehold and copyhold are the only modes of practical interest, and the latter is diminishing owing to recent legislation under which it is easily convertible into freehold.

Copyhold

Copyhold is a customary tenure, in its origin a holding "by copy of court roll, at the will of the lord, according to the custom of the manor". It was not long, however, before this custom became fixed as a right dependent upon the heir paying a fine to the lord on being admitted, and these fines, although at first arbitrary, came to be of a fixed or ascertainable amount. An important privilege, however, continues to exist in favour of the lord of the manor, in whom, unless a custom to the contrary is shown, timber and minerals upon and in the land are vested.

Copyholds can now be enfranchised at the will of either tenant or lord. Compensation can be fixed by various methods, of which the best is that provided by the Board of Agriculture. Copyholds may still be enfranchised under voluntary agreement between the lord and the copyholder, by conveyance of the lord's interest, or under statute, by agreement with the consent of the Board of Agriculture. Where the parties are not agreed, enfranchisement at the desire of either lord or tenant may be by compulsory award of the Board of Agriculture after a valuation. This award has the effect of a conveyance.

Freehold

The rest of the land of the realm is freehold held directly from the Crown. An estate or holding in land may be freehold or less than freehold, the latter being for terms of years, at will, or on sufferance. The freeholder' interest, if it is a heritable one and he dies intestate, descends to his common-law heir, in the ordinary course his eldest son, with two exceptions: by the custom of Kent, known as gavelkind, an estate descends to all sons in equal shares; in certain old boroughs the custom of Borough English obtains, under which an estate descends to the youngest son. While under the common-law rule the eldest son takes to the exclusion of everybody else, daughters or other females of the same degree share alike, forming one heir. If the owner leaves no heirs, and dies without a will, a very rare event, the estate "escheats" to the Crown.

FREEHOLD INTERESTS

Interests in freehold are estates in fee-simple, estates in fee-tail, and estates for life, the two former descending to the heir. In technical language an estate given by deed "to A and his heirs" is a fee-simple; an estate "to A and the heirs of his body" is a fee-tail; and an estate "to A" is an estate for life. A grant in such terms merely marks therefore the estate which the grantee is to enjoy, and does not confer any estate upon the heirs or the heirs of the body. In recent years it is more common to grant an estate "in fee-simple" or in "fee-tail" by name.

In wills the intention of the testator is always regarded, so if it appears from the construction of the will that it was intended to give the fee-simple, a gift "to A", without other words will give all the estate of the testator; and there is a presumption that a testator intends a gift of his whole interest unless some other interest is clearly indicated.

Grants to corporations are made to the corporation and their "successors" instead of heirs.

Estates in Fee-Simple

An estate in fee-simple is the largest interest which under English law is admitted in land, and for all practical purposes it is absolute ownership when in possession. It may be dependent on some interest enjoyed for the time by someone else. The right of alienation of a fee-simple either by will or during life has long been fully established, as well as its liability for the debts of the owner. Since 1897 real estate is administered in the same manner as personal estate and is subject to the same liabilities for debts, costs, and expenses, with the same incidents as if it were personal estate.

An Estate in Fee-Tail

It is difficult to explain an estate in fee-tail without going into its historical origin. It is an estate limited to a person and the heirs of his body. It therefore follows that the actual holder in possession has only a limited estate, but by a

fiction of the law he was allowed under certain conditions to convey or to convert to himself the fee-simple, and by the Act of 1833 a fee-tail, whether in possession, remainder, contingency or otherwise, may be alienated by a deed executed by the tenant in tail and enrolled within six months in the Central Office of the Supreme Court. If the tenant in tail is not in possession he must to disentail obtain the consent of the "protector of the settlement", who is a sort of trustee for the other interests. A tenant in tail who, without a disentailing deed or without the consent of the protector when required, purports to convey the estate creates only what is called a "base fee", that is an estate which will only subsist during his lifetime and the lifetime of the heirs of his body. This base fee, however, is capable of being enlarged into a fee-simple by subsequent grant or undisturbed possession for twelve years after the original tenant might have barred without the consent of anyone. One fee-tail estate cannot be barred and is bound to go to the heirs, viz. an estate in "special tail" when there is no possibility of issue being born to succeed, as an estate given to A and the heirs of his body by his wife B, when B is dead without leaving issue.

The Marlborough and Wellington estates, given for public services, cannot be alienated; the reversion, on failure of descendants, being in the Crown.

Although a tenant in tail may bar the entail and convert the estate into a fee-simple, unless he does so during his lifetime the estate will go to the heirs of his body, and not according to any direction by will.

A tenant in tail has the same powers with regard to the estate as a life tenant under the Settled Land Acts (see p. 30), and during his lifetime his estate is liable for his debts.

Estates for Life

The third class of freehold estates comprises estates for life. Most large landed estates in Britain are held on limited ownership, the ostensible owner for the time only having an interest for life, the absolute ownership by a system of settlements not being vested in any living individual, and the control of the estate being subject to trustees.

An estate for life may be an estate, as it generally is, for the life of the person enjoying it, or for some other person's life. In the latter case it is called an estate *pur autre vie*. The estate may be created by will or by deed. A life estate is usually conferred on one person as part of a settlement of the property in a family; or such an estate may be given to a widow, pending a distribution on her death amongst the children; or under a marriage settlement life estates may be given to both husband and wife with remainders to their children.

Incidents of Life Estates

Life interests in large estates are generally created under elaborate settlements by deed or will, and therefore the conditions of ownership of one estate may differ very largely from those of another. There are some incidents which may be noticed as generally affecting the liability of a tenant for life, having regard to the interests of those who are entitled after him. A tenant for life is generally restrained from committing "waste", and in any case he must not, unless specially empowered, commit voluntary or common-law waste, consisting of acts of a positive character, such as pulling down buildings, breaking up ancient meadow land, or opening up new mines and raising minerals, or cutting down timber which is not by the custom of the country the right of the tenant for life.

Permissive waste is waste arising from the neglect to keep an estate in proper repair, and it depends upon the terms of the settlement how far a tenant for life is liable for this. A tenant for life may be declared to be not "impeachable for waste", but in such a case on equitable grounds he will be restrained from committing a gross act of destruction, such as dismantling the mansion house or cutting ornamental timber, and hence this is also known as "equitable waste". There may be an act which is legally waste but which is really for the benefit of the property. In such a case of "ameliorative waste" the Court will leave anyone to the remedy of damages, of which there would of course be no proof.

The tenant for life is entitled to the annual crops or emblements, and his executors and administrators are entitled to gather the crops which he has sown.

Rents are regarded as accruing from day to day, and must be adjusted between the representatives of a late and an incoming owner (see also Chapter IX of this Part). The representatives of a tenant for life are also entitled to the fixtures attached by him. The ordinary powers of the life tenant were generally supplemented by special powers in the settlement, and whether this be so or not, now, under the Settled Land Acts, 1882 to 1890, large general powers have been conferred upon tenants for life which will require some brief examination.

Settlements

Estates for life, as we have seen, usually arise under a settlement, either by deed or will. Under

such a settlement there is generally a life estate, an estate in tail, and an ultimate estate in fee-simple, the object of a settlement being to preserve the continuity of the estate in the family, the legal estate remaining in trustees. Settlement can only be within certain limits, owing to legal prohibitions upon the tying up of interests in land beyond the existing generation and the coming one (see also p. 40). As a settlement purporting to give an estate to the child of an unborn person is void, re-settlement becomes necessary in almost every generation, if control is to be maintained over the family succession.

Briefly, the objects are obtained by the settlor reserving the life estate to himself, to be followed by a life estate, say, to his eldest son, a living person, and an estate in tail to that eldest son's son. This will tie the estate up until the grandson comes into possession of his estate tail and of age. There would then be nothing to prevent his disentailing and making himself absolute owner. It is therefore customary, as soon as he comes of age, to enter into a fresh settlement under which the grandson, in return for present favours, receives only an eventual life estate, and the estate in tail is passed on to the next generation.

A settlement generally provides for trustees in whom the legal estate may be vested, whose consent is necessary for certain acts, and whose duty it is—as indeed it is the duty of the tenant for life—to regard the interests not only of those who enjoy the estate for the present, but those who are to come after. A settlement is generally complicated by provisions charging the estate with the payment of certain sums for the benefit of a wife or widow, son's wife or widow, younger sons, and daughters' marriage portions, and also frequently contains powers to charge by mortgage.

By means of such a settlement—not, be it understood, by any law of primogeniture, as is sometimes popularly supposed—an estate is handed on in the same family, the consent of the younger members being usually obtained to a re-settlement in consideration of present shares in the income. This system used to be and no doubt still is liable to abuse. The settlement did not always contain liberal provisions for the management of the property; and while it was often possible to create mortgages on the whole estate, it was impossible to sell an acre. Estates therefore heavily encumbered, which produced nothing to their nominal owners, were kept out of the market, and this had an injurious effect on everyone concerned and the country generally.

The disadvantage now is one not so much due to law as to family tradition or prejudice, and the practical drawback is in an estate being still controlled by those not in actual touch with the neighbourhood. Under such a system the family solicitor and the land agent—even where there are no mortgagees—are the powerful factors in the landed interest.

Powers of a Tenant for Life

Under the provisions of the Settled Land Acts, 1882–1890, however, it is always possible for the tenant for life to exercise powers of sale, and large powers in connection with the management and development of the estate. The interests of those entitled after him are safeguarded by the provision that the purchase money or the produce of the land above and beyond the ordinary annual return becomes capital money subject to the same limitations and conditions as the estate.

The effect is therefore to give every tenant for life the powers that were given in the most liberally drawn settlement before the Acts were passed, and no tenant for life can be restrained from exercising those powers, or contract not to exercise them. The statutory powers are in addition to any given under the settlement.

A tenant for life is the person beneficially entitled to the possession of the settled land for his life, that is, a person entitled as owner, including a tenant in tail. An infant or person who may, in fact, be receiving no present income, and who may have parted with all profitable interest under the settlement, is tenant for life, nevertheless.

There must be trustees, and if not appointed by the settlement they will be appointed by the Court. Their consent is necessary to the exercise of many of the powers conferred by the Acts on the tenant for life. In other cases notice must be given to them before the exercise of the power, and they must generally receive the capital money for investment or employment, when it is not paid into Court. Their duty is to set the law in motion if they believe an abuse of the settlement is being committed by the tenant for life or any other person.

The Powers Conferred by the Settled Land Acts

The powers conferred upon a tenant for life are—

1. To sell the whole or any part of the settled land or any easement, right, or privilege over it, with the exception that the principal mansion house and the lands usually occupied with it must not be sold without the consent of the

trustees or an order of Court, unless it is usually occupied as a farmhouse, or the extent of its site and the lands occupied with it does not exceed 25 acres.

2. To exchange any part of the settled land for other land, and take money on the exchange, with the same exceptions as to the mansion house: while land out of England must not be exchanged for land in England.

3. To concur in any partition of the settled land.

4. To grant leases of the whole or part of the settled land, or of any easement, right, or privilege over it; a building lease not exceeding ninety-nine years, a mining lease sixty, or other lease twenty-one years in England or thirty-five years in Ireland; and to accept surrenders of leases.

The division of the mining rentals depends upon the question whether the tenant for life is "impeachable for waste" or not. If the tenant for life is free to commit waste he is entitled to take three-fourths of new mining rents, otherwise one-fourth, the rest being capital moneys.

5. To accept surrenders of leases; to appropriate land for streets, gardens, open spaces, &c., in connection with building leases; to make, vary, or rescind necessary contracts.

6. To cut and sell timber ripe and fit for cutting, with the consent of the trustees or order of Court, though the tenant be impeachable for waste. In this case the tenant would be entitled to one-fourth, three-fourths of the profits devolving as capital moneys. Timber is oak, ash, and elm, or others by special custom, as beech in Bucks. On an estate, however, where it is the custom to have a periodical fall, a tenant for life is entitled to the proceeds if there is no unreasonable cutting—*Dashwood v. Magniac* (1891).

7. To sell personal chattels in the nature of heirlooms, but only with an order of Court.

8. To raise money by mortgage of the land for the purposes of paying off encumbrances, providing money on exchange or partition, or for costs ordered by the Court to be paid out of the settled land.

Notice must be given to two of the trustees and their solicitors, at least one month before the power is exercised, in cases where their consent is not required. Leases for periods not exceeding twenty-one years may be made without notice to trustees.

Any sale or exchange must be at the best price obtainable, and leases at the highest obtainable rent, and there must be no acceptance of a bribe or other consideration by the tenant for life, or the transaction will be avoided. The tenant for life must have regard to all the interests; while the trustees themselves must exercise their discretion honestly.

Capital Money

The capital money, which is received by the trustees when it is not paid into Court, must be applied for the benefit of the whole estate. Certain securities are authorized for the investment of such moneys, and the tenant for life may make his selection amongst those. (See also Part IV, Chapter VII as to "Securities".) He is then entitled to the income. The money may also be expended in the discharge of encumbrances upon the settled land or in purchase of other lands to be held on the same trusts as those settled, or in improvements on the settled land which are authorized by the Act and which are sanctioned by the trustees or the Court, or in the payment of tenant's compensation under Agricultural Holdings Acts. It is often a question as to whether an outlay is an improvement of the estate or merely a benefit for the tenant for life.

PERSONAL INTERESTS IN LAND

Personal interests in land comprise leaseholds and tenancies for terms of shorter duration, which have been dealt with in Chapter IX of this Part.

Leasehold interests being personal and the subject of contract, are regarded in law as less estates than any real freehold estates. In consequence of this legal rule a leasehold estate would merge or become absorbed in a freehold if vested in the same person, the effect of which might be serious if merger were not provided against.

The ownership of chattel interests in realty and interests in goods could not by the common law be split up and divided into successive interests, as we have seen can be accomplished under settlements of real property; yet this can be done by the employment of trustees, and consequently interests of this character are also frequently the subject of settlement. It therefore becomes necessary to say something about trusts and trustees, although a full treatment will at once be recognized as outside ordinary business boundaries.

TRUST ESTATES

Origin of Trusts

Anyone who makes any study of English law constantly comes across the expressions "law and equity", equity being a supposed modification of the rigidity of the law, which in origin it was. Equity, however, in course of time became more grievous than law, until its system was made subject to rules of its own. As the rules of law and equity, however, have been assimilated, and equity and law are administered side by side, the division is of no practical importance to the litigant. But it is necessary, in order to understand the existing rules, to remember that equity had its origin in a dispensation which in early English times was by matter of grace rather than by interpretation of law. The jurisdiction in Chancery arose in consequence of this, and was exercised by the king as an equitable jurisdiction, which, although in time it came to have its own fixed rules, allowed property to be dealt with in a way which the rules of law did not permit. In the present day equity signifies a right which is protected according to rules of equity, and not by the strict rules of law. For example, the interest of a mortgagor who has according to the form of law conveyed his estate to the mortgagee is known as the "equity of redemption". The interest of a person enjoying the benefit of an estate which is vested in trustees is called an equitable estate, because he is not the legal owner, although he is beneficially entitled.

Equitable interests are interests held by trustees for the benefit of some beneficiary, technically called the *cestui que trust.*

We have seen that successive interests can be conferred by settlement of real property, but that in personal property, goods and so forth, there could not be these legal successive interests. By means of a trust, where the legal ownership is all the time vested in the trustees, there may be successive equitable interests. Thus, a marriage settlement may be made of goods, giving the interest in the first place to the husband or wife for life, and to the children after. An important method of holding property is therefore that of holding in trust, which in the old days was known as use. Owing to the usual feudal incidents which attached to legal ownership not attaching to the ownership of a use, the Statute of Uses, 1536, attempted to abolish such estates by enacting that the beneficial owner should be the legal owner. But beneficial ownership had been found so serviceable a system that a way was soon discovered round the statute, and trusts were invented, which were uses created upon the first use, the Courts holding that the force of the statute was spent when it made the first usee legal owner. One of the objects served by uses, however, had been to enable the beneficial interest in land to be left by will when the legal estate could not be devised. It was not sought to abolish this right, so the Statute of Wills was passed about the same date to make the legal interest devisable by will. Nor did the Statute of Uses ever apply to goods. The modern doctrine of trusts which grew out of this system of uses and trusts was moulded by a succession of Lord Chancellors, but became settled under Lord Nottingham in the time of Charles II. The doctrine of trusts is one, however, of technical character, and little service could be rendered to the business man by attempting any elaborate explanation. The practice even of the law is confined to the Chancery Bar, and although every Court will take cognizance of trusts, and give a remedy in equity, yet trusts and kindred questions are properly administered in the Chancery Division of the High Court.

There are generally at least three parties to the formation of a trust—the settlor, the trustee, and the *cestui que trust*—but the settlor may settle upon himself, or he may declare himself trustee. As soon as it is shown, however, that the beneficial interest belongs to someone else, a trustee will be constituted or appointed to execute the trust. Though the trustee remains the legal owner, the very expression in these days conveys the idea that he can do nothing to benefit himself, that he must with the strictest honesty carry out the conditions of his trust, and, where there is nothing in the trust deed or the general law to the contrary, obey the directions of the beneficiary. A person who is absolutely entitled to trust property may, of course, become the legal owner and put an end to the trust; but the object of the trust is generally to give someone a limited interest for life or during minority, pending the enjoyment of the estate by himself or someone else thereafter, or the division amongst various interests.

Creation of Trusts

At one time it was sufficient to create a trust for a mere declaration to be made by word of mouth; but the Statute of Frauds required every trust of land to be evidenced in writing, signed

by the person entitled to declare the trust, or his agent. The Statute, however, cannot be used as a means of fraud itself, and the want of writing will not therefore be allowed to be set up if it would be furthering a fraud to insist upon written evidence. Trusts of goods can still be created by parol, but no one in his business senses would think of so creating them. The assignment of any trust must be in writing.

A trust would arise, to take an ordinary example, where one man employs another to buy for him, say at an auction sale. Supposing the buyer, thinking he had secured a good bargain, took a conveyance to himself, the Court would in such a case declare that he held as trustee for the person instructing him to buy.

Practically any class of property may be the subject of a trust, so long as the trust itself is not for an illegal object.

Trusts Generally

An express trust is one in which the object is either clearly expressed by the settlor or easily gathered from a written instrument. There must be a certain subject-matter, a definite object, and a binding trust created. A mere request or prayer does not constitute a trust. To complete a trust there must either be an actual transfer to a beneficiary or to a trustee, or the settlor must declare himself trustee for the beneficiary.

A complete trust, though voluntary, is irrevocable, except in certain cases where it is shown to have been the duty of someone to point out its character to the settlor and this duty was disregarded.

A trust for creditors is an "illusory" trust. It is liable to be revoked, as it is an arrangement for a debtor's own benefit and convenience, and any surplus after the payment of the debts will generally belong to the debtor. But such a trust becomes irrevocable after communication to creditors, if their position is altered by it or if they have assented to it by deed.

The Court may sometimes cancel a trust at the settlor's request where it has been made by mistake or the object has failed. A trust will also be defeated if it is made in fraud of creditors, and may be avoided under the provisions of the Bankruptcy Act. (See Chapter XI of this Part.)

Formerly a voluntary conveyance was avoided by a subsequent conveyance for value, but this is no longer so with regard to *bona fide* voluntary conveyances.

Trusts may be executed or executory. In the former case the settlor has himself conveyed the property; in the latter case he has directed certain property to be settled and certain things to be carried out.

There may be a secret trust, in the sense that the purpose of the trust is not declared until after the death of the settlor, but in such a case there must have been a communication to the devisee, and he must have accepted the particular trust. It is not permissible to leave property on an indefinite trust, as that would amount to allowing a man to make an unattested codicil to his will.

Trusts are also implied and constructive. An implied trust arises, for example, when a person who has been employed to buy an estate takes a conveyance of it to himself. A trust is raised by construction of law, for example, where a profit has been made out of the trust property by the trustee. A trustee who secured a renewal of a lease, part of the trust property, to himself, even although the lessor had refused a renewal to the trust estate, was nevertheless held to be a constructive trustee of the lease.

Trusts may be private, or public, that is, for a charitable purpose. While purely charitable trusts are favoured by the law, trusts for superstitious purposes are not given effect to. Where there is a charitable direction, and the express purpose cannot be carried out, the Courts will, in accordance with the *cy près* doctrine, direct the carrying out of the trust in a manner as near as possible to the wishes of the settlor. Where there is a gift to charities, surplus income will also be expended in a similar charitable direction.

Gifts to a charity must be made by deed, enrolled in the Supreme Court, unless by will. Land coming to a charity, with certain exceptions as to land for particular purposes, must be sold within twelve months.

Duties and Liabilities of Trustees

Most men are at some time or other the, generally unwilling, trustees for some friend or relative. But supposing there is a trust declared, "equity never wants a trustee", and some person will be found to take on the duties of trustee, and the appointment of new and additional trustees in case of need is provided for. Practically anyone is competent to be a trustee. It has long been common for corporations to accept fiduciary positions as a matter of business, trustees may be appointed by the Court and paid as judicial trustees, and there is now an official known as a Public Trustee who can be constituted by settlors trustee for their estates.

The Public Trustee began his duties in 1908;

he may be appointed administrator of estates under £1000; may act as ordinary or judicial trustee alone or jointly with others; may be appointed as custodian trustee; i.e. he may have the custody of the documents and securities while other trustees perform the active duties of the trust. A person may by will appoint the Public Trustee without his consent, but his appointment does not become effective until he consents, and he may always decline a trust. He cannot be appointed to a trust which necessitates the carrying on of any business. He is remunerated by fees. (As to "Custodian Trustees", see Part IV, Chapter III.)

Any person who has been appointed trustee may disclaim before entering upon the trust, and afterwards, under certain circumstances, he may retire either by leave of the Court, with the consent of the beneficiaries fully competent, or when there are sufficient other trustees to perform the trust. On the death of one the trust devolves on the other trustees; on the death of a sole trustee, on his personal representative, except as regards copyholds, which go to the customary heir.

The general duties of a trustee are to carry out the terms of the trust as laid down in the trust deed and according to general law, to make no profit out of the trust except as specially laid down, and to see to the investment of capital and the payment of income. It may in certain cases, where an estate is left with life interests followed by reversionary interests, be his duty to sell out property of a depreciating or wasting character and reinvest in property which shows a smaller return but greater security.

Duties of trustees with regard to investments are to follow the trust deed, and to invest only in the trust securities laid down by the Act or directed by the settlor. (See also Part IV, Chapter VII.)

When advancing on mortgage, trustees must employ a competent surveyor and advance only to the extent of two-thirds of the value according to his report. Trustees are authorized to employ professional assistance, but they must exercise their discretion in the employment or they will be responsible for the acts of those they employ. A solicitor may be allowed to receive the purchase money on a sale; trust money may be paid into a bank; an auctioneer may be employed in the usual way; and generally the services of agents may be requisitioned in the ordinary course of business, provided the trustees do not act contrary to their express instructions or with carelessness. Money must not be left in the hands of such agents; it must be invested in due time. Otherwise a trustee will be liable for loss ensuing, either of principal or of interest which might have been earned.

A trustee must on no account employ trust funds in his own business, and he should not mix trust moneys with his own. In the event of any confusion of his own money with the trust moneys a trustee is bound to suffer, and trust funds can be followed even when they have passed into the hands of other people. Should a trustee employ trust funds and make a profit, the profit will belong to the trust, and he cannot set off a gain in one direction against a loss in another.

The powers of trustees are several, and so long as a trustee is not guilty of negligence he will not be responsible for the default of a co-trustee. He is liable for his own breach of trust, but, except in a case of fraud, he must be sued within the statutory period of six years, and laches and acquiescence in a breach of trust by beneficiaries fully competent and entitled will be a bar to proceedings against the trustee. Should a beneficiary instigate or request a trustee to commit, or consent in writing to, or acquiesce in or confirm, a breach of trust, his interest may be taken to make good any loss. A trustee may be liable civilly and criminally for breach of trust.

An ordinary trustee, although usually bound to act without any remuneration or profit, may in certain cases be entitled to remuneration: Where the trust deed specially provides for it; where the trustee expressly stipulated for it when he accepted the trust; by allowance of the Court; or where the trust property is abroad and the local Courts customarily allow it; and in a few other cases.

A trustee must be ready to furnish information with regard to the estate to the beneficiaries at all times. He is entitled when he lays down the trust to be re-embursed for all his expenses reasonably incurred, and to receive an indemnity from the beneficiaries. He should always be careful to ask for a release and indemnity. A trustee who acts with care and diligence, and with regard to his special duties, and in other matters uses ordinary prudence, will have nothing to fear. If he is in doubt as to what is his duty in regard to a particular matter he should apply to the Court for directions.

OWNERSHIP IN COMMUNITY

We have seen that there can be successive interests and also legal and equitable interests in an estate. The ownership itself at the same time may be vested in more than one person. This joint method of holding interests in real property is either joint tenancy, tenancy in common, coparcenary, or tenancy by entireties. These all agree in the one particular that the estate is held in undivided shares by the several individals, although there may be a right to enforce a division.

Joint tenancies and tenancies in common exist in goods as well as lands; not so the other tenancies.

Joint Tenancy

Joint tenancy is due to some gift, grant, or agreement, as where one man makes a grant to A and B or to A and B jointly, or in any form so as to show that A and B are to hold together. There is therefore as regards A and B a unity of title, unity of the time of enjoyment, unity of the interest which they enjoy, and unity of possession. As far as joint tenants are concerned one is equal to the other in every respect. No one owns the whole nor any particular portion, but all join in the ownership of the whole. The most conspicuous result of such ownership is the right of survivorship, under which, on the death of one of the joint tenants, his share goes, not to his heir or according to his will, but to the other joint tenant or joint tenants. There are exceptions to this, the chief of which is due to commercial custom. Where land has been bought by a partnership it is not subject to joint ownership, but to the ordinary incidents of the partnership assets, and partnership property is regarded as personalty. On the death of a partner, therefore, the other partners hold his share in the land for the benefit of his representatives after the payment of partnership debts. (See Chapter III of this Part.)

In the same way where two or more purchasers of land on a joint venture advance the purchase money in unequal shares, although legally they became joint tenants and therefore equally interested, equity steps in and regards them as tenants in common. In all cases of money advanced on mortgage this rule prevails. In the case of gifts by will the Courts will readily seize upon any "words of severance".

Again, supposing an agreement has been come to between the joint tenants for a partition, although it has not been actually carried out, the Court will order the agreement to be carried out.

Joint ownership is a suitable form of ownership for those nearly related, but unsuitable for strangers. It is also the common method by which trustees hold property, as the rule of survivorship is there a highly convenient one. But in ordinary cases it is often preferable to sever the tenancy and divide the estate.

Although a joint tenant may not leave his interest by will he may alienate it during his life, in which case the person taking from him holds as tenant in common with the other joint tenants; but it is more usual to seek partition, and the right to partition has been conferred by a series of Acts, and may take place in various ways. The Court has a discretion in any case, but if the parties to the extent of at least one-half in interest petition the Court a sale and division of the proceeds will generally be decreed.

Tenancy in Common

Tenancy in common, unlike joint tenancy, only consists in unity in possession, the estate being held as a whole by the various tenants for the time. Their interests are not necessarily equal, and there is no right of survivorship. Each tenant in common can alienate or leave by will his interest. If he dies without a will it goes to his representatives. Partition can also be effected.

Coparcenary

This is a method of holding an estate which is due to the law in certain cases constituting two or more persons a single heir. It applies only to freeholds, and usually to females who, when they inherit, take undivided equal shares, although if one of them has died leaving issue the children take the mother's share as coparceners with the surviving sisters. It is only under special custom that males take in this form. There is no right of survivorship, and partition can be enforced.

Tenancy by Entireties

Tenancy by entireties is an almost extinct method of holding freeholds, being founded upon the old doctrine that husband and wife in law were one person. A gift to A and B, being husband and wife, was therefore a gift to one. Probably since the Married Women's Property Act, 1882, an estate given in this way would make A and B joint tenants, but a grant to A and B, and C, a stranger, would still confer the estate in equal interests, A and B taking one half and C the other.

OWNERSHIP IN EXPECTANCY

A person may be entitled as owner, but his period of enjoyment may be postponed, the estate being vested in another for the time, although his right of eventual succession is secure. Where a person has himself granted away an intervening interest he is said to be entitled to the reversion; when he is to take under the grant of someone else in succession to another person or persons he is said to take in remainder.

Future ownership in this way was hardly possible in the early days of the law, and for long limitations of this character were not favoured. Then the only future estate that was recognized was an estate given to a definite living person on the termination of the estate of another person. The idea was that if there was not an actual person in being to take up the ownership at the time fixed there was a danger of discontinuity of ownership, which the law did not allow, and therefore the limitation was void. The rule, however, became settled that a legal future interest must be made to commence immediately on the natural determination of a preceding freehold interest, and if it was made to commence on any other event or contingency it was void.

The rule with regard to creating future interests now is that if a life estate or an estate tail has been given to a living person the estate may be given in remainder to a person unborn at the date of the settlement, but no further. If it is attempted to give the freehold interest to that unborn person's child or heir, that gift and any interests following will be invalid; but an estate tail may be given to the unborn person.

Reversions

Reversions are well understood in the property market and call for little comment, the expression being generally applied to the interest of the owner on the determination of a lease or life interest granted by him or his predecessors in title. Reversionary interests are estates coming to a person after intervening interests; and expectancies are such future interests of a more uncertain character.

Remainders

Remainders are more complicated than reversions; they are vested or contingent. A vested remainder is an actual estate given to a person or class living and certain, of which the enjoyment only is deferred to some future time. Once it is vested in a person it will go to his heirs if he dies before it falls into possession. It is as realizable as, and is often popularly confused with, a reversion. A contingent remainder, as the name implies, depends upon some event which may or may not happen. The person may not be ascertained or the event may not happen. A contingent remainder is therefore not an ascertainable estate until the event happens and the estate becomes "vested". The remainder must be ready to vest on determination of the previous, the particular, estate on which it depends, or it will fail.

Contingent remainders are obviously liable to failure, although failure on the technical grounds which once obtained has now been guarded against by statute.

Executory Interests

Future interests, however, of this character are of three kinds: remainders properly so called, and executory interests which arise under wills or under deeds, the latter being creations by way of trust, known as springing or shifting uses. Into the technical creation and the effect of these limitations it is impossible to enter, but one further method of creating future interests must be noticed as arising under what are known as powers of appointment.

Powers of Appointment

These powers are of two kinds: ordinary common-law powers and powers operating by way of trust or use, the latter conferring only a beneficial and the former a legal estate. Powers are general and special. A general power of appointment given to a person is equivalent to ownership, as, having the power to appoint anyone, he can appoint himself. Supposing the rare instance in which a man does not exercise this right, the law has conferred the power upon a judgment creditor to satisfy himself out of the land over which the debtor has the power, and a trustee in bankruptcy can exercise such a power for the benefit of the debtor's estate. The power can also be exercised by will; and a general devise of all the estate will, unless a contrary indication is shown, be presumed to include estate over which the testator had a general power of appointment.

Special powers, however, are entirely different, and consist merely of an authority given to one person to appoint an estate to one or more amongst a class of persons. The commonest instance is when a life interest is given to A and the remainder to such of A's children as he shall by

will or deed appoint. If this power is not exercised, the children will take in equal shares.

Accumulation of Income

As we have seen, the law prohibits estates being created in perpetuity after certain limits. Within those limits, that is, during a life or lives in being at the death of a settlor and twenty-one years after, it was at one time possible for a testator to direct that his income should be accumulated to benefit remote descendants, and so an Act had to be passed in 1800, called after a whimsical testator, Mr. Thellusson, to restrain this. The income therefore on settled property cannot be accumulated beyond one of the following periods: for the life of the settlor, or twenty-one years from the death of the settlor, or during the minority or respective minorities of any person or persons who may be living at the death of the settlor, or the minority or respective minorities of any person or persons who under the settlement would, for the time being, if of full age, be entitled to the income. The Act does not apply to accumulations directed for the purpose of paying the debts of the settlor or any other person, or raising portions for any child of the settlor or other person interested under the settlement, nor to any direction as to the proceeds of timber and woods. The Act does not apply to Ireland.

The Accumulations Act of 1892 provides that where funds resulting from accumulating the income of settled property are to be invested in the purchase of land only, no accumulation must be for a longer period than the minority or respective minorities of the person or persons who would, if of full age, be entitled to receive the income. This Act applies to Ireland.

OWNERSHIP ON CONDITION

The ownership of land may sometimes depend upon a condition. A condition precedent must be performed before the ownership arises. A condition subsequent, if not performed, divests the owner in favour of someone else.

It may be provided that an estate shall go to A, and afterwards to his second son B; but should B succeed to the settled estates, then the estate is to go over to C, another son of A. In the case of C, his succession depends upon a condition precedent, namely, the succession of B to other estates. The estate of B is subject to a condition subsequent upon the happening of which it will go over to C. Certain conditions are void, however, on the grounds of public policy, and if such a condition is imposed as a condition precedent no estate arises, whereas if it is a condition subsequent the estate is held discharged from the condition. Conditions against good morals, or absolutely restraining alienation, or in general restraint of marriage, are such void conditions.

Where a grant is made to A until the happening of a certain event, when the estate is to go over to B, it is called a conditional limitation.

Conditional ownerships of the most practical importance arise, however, in connection with mortgages, land subject to mortgage being in law held on the condition that if the money lent is repaid within a certain fixed time the estate shall be reconveyed. Mortgages, however, have been discussed elsewhere; and it is there seen that the estate of the mortgagee is not in equity determined by non-payment at the day fixed in the deed. (See Chapter XII of this Part.)

TRANSFER OF LAND

Transfer of land usually takes place by the act of the owner, either by conveyance during his lifetime or testamentary disposition. A transfer, however, may sometimes take place without the consent of the owner, the most common example of which happens on the owner's bankruptcy. (See Chapter XI of this Part.) In the event of an owner dying intestate his estate devolves in accordance with the rules of succession. These rules have been discussed in connection with the subject of Wills and Intestacy in another place. (See Chapter XIII of this Part.)

The right of the husband in the property of a wife has been touched upon elsewhere (Chapters I and XIII of this Part), but, in view of the Married Women's Property Acts, marriage may now be disregarded as a mode of transfer. The right of a wife in her husband's lands—known as dower—used to be of much greater importance. When not otherwise provided for, and when dower is not declared against by the husband's deed or will, a widow is entitled to dower to the extent of a life estate in one-third of the heritable lands of which her husband dies the owner.

Title may also sometimes be acquired by possession as against the true owner, but the most

ordinary means of acquisition of ownership is transfer or conveyance by the act of the owner.

Conveyance

The transfer of land, although the subject is by no means so intricate and complicated as it was in comparatively recent times, is nevertheless an operation on which no man can embark without legal advice and assistance. Not only does the conveyance of land call for the preparation of a deed, but investigation into the title of land requires the assistance of the expert conveyancing lawyer. No useful purpose therefore can be served in a book of this character by giving more than a mere explanatory outline of the system of conveyancing as affecting vendors and purchasers of land. The great difference between land and goods arises from the fact that possession of goods is generally the best presumption of ownership, whereas a person in possession of land may, as we have seen, be only a limited owner or tenant, and have no power to enter into a valid transfer. An agreement for sale may therefore be made of land, including, of course, in the term land house property or anything connected with land, but when the time comes to enter into a formal conveyance, it may be found that the vendor lacks the authority to sell, in other words cannot give a good title. Consequently certain formalities have to be gone through before the completion of a contract for the sale of land.

A contract for the sale of land must be evidenced by a memorandum in writing signed by the party to be charged in accordance with the requirements of the Statute of Frauds. (See Chapter I of this Part.) A contract may, however, be enforced which is not written, when there has been part performance; for example, where a purchaser under a verbal contract is let into possession of the property before completion his possession can only be explained by the supposition that there was a contract previously entered into, and verbal evidence of that contract is therefore admissible. But an act of part performance must be distinctly relevant to a contract and incapable of other construction, and must be by the person seeking to enforce the agreement.

A vendor must disclose all that is material for a purchaser to know and which could not be discovered by observation, but a purchaser is not bound to disclose facts known to him. He must, however, be careful not to mislead or misrepresent anything to the vendor, and if a purchaser has been in a position of duty towards a vendor he will not be allowed to take advantage of information coming to him in the discharge of that duty. (See as to an "Agent", Chapter II of this Part.)

The first consideration for the vendor who contemplates a sale is to examine his title. If he does not possess the full forty years' title which the law enables the purchaser to call for, he must stipulate for a sale on the basis of such title as he can command. There are many owners of property whose ownership is unquestionable, but who could not without considerable expense and trouble give the forty years' title.

It is the duty of the vendor to deliver to the purchaser's solicitor what is called an abstract of title, which sets out the connecting links of the title of the vendor, going back to the necessary or agreed root of title. For example, A is selling a house and lands to which he has just succeeded under the will of his father. The abstract would disclose the material history of the property from the proof of the vendor's father's will, the will itself, the purchase or other acquisition by the father, any mortgage transactions that had taken place, &c. &c., back to the agreed root of title. If the purchaser's solicitor is not satisfied with the title disclosed by the abstract, or by the investigation of the deeds, he makes requisitions, i.e. he requires further information; but when all is satisfactorily concluded the conveyance is prepared, usually by the vendor's solicitor at the expense of the purchaser. If not, the purchaser declines to complete. There may be covenants on the part of the vendor of a special character, but there are implied by law on the part of a vendor, conveying as "beneficial owner", covenants for the right to convey the estate, for quiet enjoyment by the purchaser, for freedom from encumbrances undisclosed, and for further assurance that the vendor will do any acts, when called upon, to render the transfer of the estate to the purchaser complete; in a sale of leasehold, there is a further covenant that the lease is valid and subsisting. If a grantor conveys as trustee or mortgagee, he only covenants against encumbrances which he himself has created; if as settlor, only for further assurance. (See as to "Sales by Auction", Chapter VI of this Part.)

Where a purchaser fails to complete the contract without reasonable excuse the vendor may proceed to enforce it. Should the failure to complete be owing to the want of a good title on the part of the vendor, however, the purchaser is entitled to recover his deposit but not damages. Conditions determining the vendor's rights to rescind the contract, or the purchaser's rights to have the contract set aside, are generally included in the contract. It often becomes a question for the Courts depending much upon character and quantity, whether a misdescription entitles the purchaser to decline completion or only to claim compensation.

The vendor's remedies for non-completion are either to sue for damages or to claim specific performance of the contract.

Should any question arise not affecting the existence or validity of the contract itself, a Vendor and Purchaser Summons may be taken out, on which such question may be decided by a judge.

We give a simple form of the conveyance of freehold, but it generally happens that the conveyance contains a number of minor covenants, some of which may be restrictive upon the uses of the property, some may reserve rights to the vendor, while others may provide for things to be done on the land, or even apart from the land altogether.

Form of Conveyance of the Fee-simple of Freehold House and Land

This indenture made the ..... day of ..... Between Alfred Bone of 1009 Leadenhall Street, in the City of London, merchant, of the one part, and Charles Duffield, of Duffield Hall, in the County of . ..... of the other part;

WHEREAS by an indenture dated the ..... day of ..... and expressed to be made between Thomas Smith of the first part, George Brown of the second part, Adolphus Blackwood of the third part, and the said Alfred Bone of the fourth part, the hereditaments hereby assured were granted to the use of the said Alfred Bone and his assigns;

AND WHEREAS the said Alfred Bone has agreed with the said Charles Duffield for the sale to him for the sum of £5000, of all the hereditaments hereby assured in fee-simple in possession free from encumbrances;

NOW THIS INDENTURE WITNESSETH that for effectuating the said sale, and in consideration of the sum of £5000 now paid by the said Charles Duffield to the said Alfred Bone (the receipt whereof the said Alfred Bone doth hereby acknowledge) he the said Alfred Bone as BENEFICIAL OWNER doth hereby GRANT UNTO the said Charles Duffield

ALL THAT messuage or dwelling house with the several parcels of land belonging thereto, known as the Green House, situate in the parish of X, in the county of Y, and particularly described in the First Schedule hereto and delineated in the plan drawn on these presents and thereon coloured red;

TO HAVE AND TO HOLD the same premises UNTO AND TO THE USE of the said Charles Duffield, his heirs and assigns;

IN WITNESS whereof the said parties hereto have hereunto set their respective hands and seals the day and year first above written.

Signature of witnesses .....

Signatures of parties .....

The schedule above referred to [particulars of the parcels of land, &c.]

Form of Marriage Settlement

THIS INDENTURE made the ..... day of ..... between Alfred Bone of the first part, and Charlotte Doanes of the second part, and Edward Finch and George Hay of the third part:

WHEREAS it has been agreed that a marriage shall be solemnized between the said Alfred Bone and the said Charlotte Doanes,

NOW THIS INDENTURE WITNESSETH that in consideration of the said marriage, the said Alfred Bone as Settlor hereby conveys unto the said Edward Finch and George Hay ALL THAT messuage and dwelling house known as 199 Broad Street, West, and the messuage and premises known as 111 Broad Street, West, all situated in the Borough of ..... in the County of ..... particularly described in the first schedule hereto and delineated in the plan drawn on these presents and thereon coloured blue;

TO HOLD UNTO the said Edward Finch and George Hay in fee-simple TO THE USE of the said Alfred Bone until the intended marriage shall be solemnized and after the solemnization TO THE USE of the said Edward Finch and George Hay, their heirs and assigns,
UPON THE TRUSTS hereinafter declared;

[The settlement will then go on to say how the properties are to be held; it is generally provided that the income shall be for the joint benefit of husband and wife, and for the survivor's benefit, and then for the property to be divided equally between the children at a certain time; perhaps giving a power of sale and expenditure for the children's benefit to the trustees]

And it is hereby agreed that the said Alfred Bone and Charlotte Doanes during their joint lives and the survivor of them during his or her life shall have power to appoint new trustees

IN WITNESS WHEREOF, &c.

There were many methods of transfer in the earlier stages of our law, but it is unnecessary to regard any other than that by deed, or will (see

Chapter XIII of this Part), and a method of facilitating the transfer of land which has been comparatively recently legalized by the Land Transfer Acts. Under the Land Transfer Acts, 1875 and 1897, and the Rules, interests in land may be registered and transfer effected by entry in the Register. Not only transfer but all incidents in connection with the land must be registered, the idea being that the title to land, together with any encumbrances or charges upon it, should be a matter of public knowledge. It was thought that this would facilitate the transfer of land and vastly decrease the expense of investigation of title on individual transactions. Registration of land is not generally compulsory, therefore a system of transfer by registration is very far off. Registration on the sale of freeholds and leaseholds (of more than forty years, or two lives) is compulsory in the County of London. The purchaser must register a possessory title in order to complete the conveyance. Registration is effected by application to the Land Registry and production of the deed of title and a statutory declaration. The system is open to much criticism, and there are strong advocates of its abolition.

Registration of conveyances, wills, and encumbrances in and on land in Middlesex and Yorkshire is provided for by earlier statutes. In Ireland registration of dealings in land was required by a Statute of Anne. By the Local Registration of Title (Ireland) Act, 1891, ownership of lands purchased by tenants under the Land Purchase Acts must, and ownership of other lands may, be registered.

TITLE BY POSSESSION

He is a rare and fortunate man who in these days has acquired anything by the mere fact of adverse occupation against the true owner. As a matter of law lapse of time will confer a title, and it is often a means of acquiring a good title when the actual deeds are lost. Technically, possession confers a title not as a means of ownership but by limitation of the right of someone else to sue. The Real Property Limitation Acts provide that no person may make an entry or distress or bring an action or suit for the recovery of land or rent except within twelve years after the right first accrued, unless there has been some acknowledgement of obligation in writing by the person in possession, or unless the person entitled was under disability. Unchallenged possession for a period of thirty years confers a good possessory title.

RIGHTS OVER LAND OF OTHERS

Valuable rights may exist in connection with land apart from its actual ownership. These rights may be enjoyed as appurtenant or appendant to land, or apart altogether from the ownership of any interest in the land, that is, as a right in gross.

Rights in connection with the ownership of land are known as easements, while other rights of profit from land are called *profits à prendre*, which are principally rights of common, or franchises, originally royal grants, generally in connection with fishing and hunting rents, annuities charged on land, and tithes.

Commons

The right of common may be of several kinds, the most important being common of pasture. There may also be rights to cut turf and wood, and dig for gravel or minerals. The ownership of common lands is in the lord of the manor, and until recent years the policy of enclosure was encouraged to the extent that many commons became private property. But under an awakened public spirit, Inclosure Acts have been passed, and the consent of the Board of Agriculture is necessary with regard to any scheme of approvement or inclosure.

Except as regards tenants of the manor, and under certain local customs, a right of common cannot be asserted on behalf of an indefinite number of persons unincorporated, as the inhabitants of a village, by virtue of a local custom, unless the right has been granted by the Crown or by Parliament.

In London special legislation has protected commons, and elsewhere district councils can present a scheme for the regulation of any common within their district to the Board of Agriculture for approval, and obtain control and acquire the rights of property.

Waste land situated by the roadside is presumed to be the property of the adjoining owner, unless it is connected with a common, in which case it is regarded as belonging to the lord of the manor.

Rent

(See also Chapter IX of this Part.)

Rents are either rent-services or rent-charges. Rent-service is payment in the ordinary way for the use of land. Rent due on a fee-simple as a permanent rent is generally known as a "Quit Rent", and is usually a payment of a small amount. Under the name of fee farm rents this form of rent is common in the North of England. It is really a rent-charge.

A rent-charge is created by an express charge on land by deed or will. Unless made by will or as part of a marriage settlement for a life or lives or estate determinable on a life or lives, such a charge requires registration, except where a purchaser or mortgagee acquires the land with notice of the rent-charge.

Tithes

Tithes, originally the right to a tenth part of the profits of the land, payable in kind, are now commuted into a rent-charge varying with the price of corn, payable in each case by the owner of the land and not by the tenant. Although originally for the support of the Church, many tithes are in lay hands. Tithes do not pass with the grant of the estate over which they exist, but descend as freeholds.

Advowson

An advowson is the perpetual right of presentation to an ecclesiastical benefice. It is real property. An advowson may be sold, apart from the estate with which it is usually held, and so may the right of next presentation, except during the actual vacancy. The transfer of an advowson must be registered within one month in the Diocesan Registry, and must not take place within twelve months of the last admission to the benefice.

Easements

Easements are rights to exercise certain powers of ownership over the land of others, and frequently add very largely to the value of one property while depreciating the value of another, the former being called the dominant and the latter the servient tenement. A licence is a mere personal liberty, granted without giving any right to possession. An easement is something above and beyond the natural rights which one owner has against another as an incident of ownership, like the right of support enjoyed by the owner of one plot of land against the owner of the adjoining plot, who must not dig away his land so as to let his neighbour's fall in. Easements are additions to these ordinary rights, and must be acquired either by express or implied grant, or by prescription. By implied grant, easements are held to arise through circumstances. A person who makes a grant is not allowed to derogate from his own grant; so if a person conveys land, and there is no other way to it but over the land of the vendor, there is an implied right of way, or way of necessity as it is called. Supposing a man has built two houses on his land, there is generally an implied right of light for the windows of each house which they are at present enjoying over the land of the other, if they pass into the ownership of different persons. Enjoyment for a long time confers a right, the length of time depending upon the nature of the easement to be acquired. The Prescription Act, 1832, has fixed statutory periods in most cases, although other rights must still be acquired by uninterrupted enjoyment for twenty years and in the absence of proof that any other person has enjoyed rights to the contrary. There was a difference of opinion in the highest Courts as to whether the right of support for buildings from adjacent soil or from other buildings was conferred by long user or under the Prescription Act, but such a right can undoubtedly be acquired by twenty years' uninterrupted enjoyment — *Dalton v. Angus* (1881), *Lemaitre v. Davis* (1881)—where no counter right of enjoyment has been shown.

The ordinary terms are: *Light and air*, twenty years' enjoyment confers absolute privilege; *rights of way*, *rights to water*, and *rights of support*, twenty years' enjoyment confers a right in the absence of evidence to displace it, while forty years' enjoyment is indefeasible. No interruption in the right of enjoyment, however, will be effective unless it continues for at least a year, so this practically reduces the qualifying period by one year.

The right to light is acquired where the access and use of light to and for any dwelling house, workshop, or other building has been actually enjoyed for twenty years without interruption, unless it was enjoyed merely by written consent. The right may also be enjoyed by express or implied grant on terms. Light can only be acquired in respect of buildings, not for open spaces.

The right actually acquired is that which is necessary for the ordinary use of the building, and it cannot be enlarged on rebuilding; but the actual light is not lost by rebuilding or alterations so long as the "ancient lights" exist and remain substantially capable of enjoyment. The

right may be lost by encroachment, but an unauthorized encroachment is a nuisance which can be remedied by action. (See also Chapter XXIV of this Part.)

The right to air apart from light does not exist, except in a particular channel to a particular place as acquired by immemorial user—*Chastey v. Ackland* (1895).

There is still a wide belief in the rule of the angle of 45 degrees, that is, that if a building does not come so near as to make an angle less than 45 degrees at the base of the building whose light is alleged to be obstructed there is no material encroachment. This is, however, not a rule of law, and only serves as a rough working test which may be well applied in many cases. The correct rule is that there must be a substantial deprivation of light, enough to render the occupation of a house uncomfortable, and, in the case of business premises, to prevent the person suing from carrying on his business as beneficially as before—*Colls v. Home and Colonial Stores* (1904).

Rights of way are well understood in connection with the ownership of property, and public rights of way are now sternly protected by local authorities.

Rights of Water.—The owner through whose land a natural stream flows in a definite course has a right to receive its uninterrupted flow in its natural purity, and to the reasonable use of water from the stream; but it is possible for any riparian owner, by grant or prescription, to secure a right as an easement to use the water in a certain way, divert its course, or pollute it. When a stream runs in a defined course there is a natural right to its uninterrupted flow even if it runs underground. But there is no natural right to underground water which does not follow a known course, although the drying up of a well or the loss of a water supply may clearly be traced to sinking operations on the land of a neighbour. This was clearly established in the celebrated case of *Chasemore v. Richards* (1859). Pumping operations for water supply by the Croydon local authority had diverted the undefined underground water and diminished the flow of the River Wandle. A millowner was held to have no right to damages. It is immaterial when there is such a right to take water with what motive the act is done.

The Scotch law is the same—*Milton v. Glen Moray Glenlivet Distillery Company, Ltd.* (1898).

That there is no right of property in underground percolating water has often been felt by landowners to be a grievance. When parliamentary powers have been sought by water companies, clauses have sometimes been inserted for the protection of existing wells. (See also Chapter XXI of this Part.)

River and Seashore

The ownership of the bed of a non-tidal river is in the owners on each bank to the middle of the stream respectively, but up to high-water mark the ownership of the bed of a tidal river is in the Crown. The Crown also owns the seashore between high- and low-water mark, but grants have often been conferred upon individuals and local authorities.

Boundary Fences

There is, as a general rule, no obligation upon an owner to fence in his land; such an obligation may be imposed by agreement, or prescription in the interests of a neighbour, not of a stranger. An owner is liable if his cattle stray or anything brought on to his land escapes from it on to his neighbour's or on to the highway and causes damage. Railway companies and mine owners are under statutory necessity to fence. Barbed wire must not be used where probable injury might result to anyone using the highway, and anything in the shape of a nuisance on land can be restrained. (See Chapter XXV of this Part.)

The ownership of a wall, fence, or hedge between two properties is often in doubt. The struts of a fence are generally in the owner's land, and from their being on his side, ownership of the fence may be presumed. The ownership of a party wall, in the absence of evidence to the contrary, is presumed to be in the respective adjoining owners to the middle of the wall; but where it has been erected at the joint expense it may belong to two as tenants in common.

In London, party walls and the duties of adjoining owners are defined by the London Building Acts.

Mines and Minerals

The ownership of mines and minerals is generally in the owner of the soil. We have seen the exception in the case of copyholds, where even after enfranchisement the lord may be the owner of the minerals. By custom in certain parts, as in Cornwall, the minerals in freehold lands may be in the lord. Gold and silver is in theory in the Crown, but the right is in practice limited to take at a certain price the ores in tin, iron, copper, or lead mines with gold and silver in them.

The right to take minerals is commonly the subject of separate grant, and in the case of compulsory acquisition by railway and water companies the minerals remain the property of the previous owners of the soil unless specially conveyed.

BY-LAWS AND RESTRICTIVE CONDITIONS

In the interests of the community various restrictions are imposed upon owners in the use that can be made of land, restrictions which tend to increase under modern legislation. Building and general public health statutes and by-laws made under general powers conferred on local authorities may have a material effect upon the use of land, especially in urban areas. We have already noticed some of these regulations in connection with town planning and housing in Chapter IX of this Part.

Local authorities have large powers under the Public Health Act for dealing with insanitary dwellings and for controlling new buildings and the rebuilding of all premises; in certain cases by paying compensation to the owner and in other cases without. (See also Chapter XXIV of this Part.)

By-laws are made by the local authorities subject to the approval of the Local Government Board or Secretary for Scotland, and by-laws which are reasonable have the force of law. Building and other by-laws are generally founded on models sanctioned by the Local Government Board, but in many cases a local authority may possess by-laws which are peculiar in their character. It is therefore a matter of importance to anyone who contemplates the purchase of land to enquire into this restriction by by-laws upon his possible use of it.

Within an urban area, as we have seen elsewhere (Part I, Chapter XIII), it is impossible to erect factories or premises for the carrying on of certain offensive trades, and by-laws may be of such a character that the erection of other business premises may be made so expensive that it is desirable to seek another area, quite apart from the question of rates.

Many estates are subject to conditions imposed by present or former owners which entirely prohibit or restrict the erection of business premises. In certain cases no licensed premises may be erected on the whole of the estate; in other cases buildings must be confined to those of a residential character. The purchase of property without a knowledge or proper appreciation of these restrictions may often lead to litigation and loss. Where an estate which has been laid out on a general building scheme has passed into various hands, the benefit of these covenants and restrictions is for the purchasers *inter se*, and, unless power has been reserved to the vendor, there may be no one in existence in a position to waive them. Although breaches of the restrictions may take place in various other parts of the estate, and no one take the trouble to restrain them, it would be unsafe to assume that the restriction could be disregarded in the case of the property concerned.

Such restrictions are also common in leasehold property, which class of property is full of traps for the unwary. The owner of a leasehold is generally under the necessity of expending a considerable amount in repairs on the termination of the lease, and the fag end of a long lease is therefore often for sale at a nominal price. (See also Chapter IX of this Part.) Such a property would be a disastrous speculation for anyone who did not appreciate its character.

THE LAND LAWS OF SCOTLAND

Introductory

In Scotland property is either heritable or moveable, a classification which corresponds very closely to the English division of property into realty and personalty. The boundary line between the two classes is not, however, sharply defined. Generally speaking, it may be said that all rights in, or connected with, land are heritable, while whatever moves or can be moved without injury to itself or to the subject with which it is connected, and whatever is not united to land, is moveable. But things which in themselves are moveable may become heritable by being or becoming annexed to land or other heritable subject so as to become fixtures. Similarly, subjects which by nature are heritable may become moveable, as, for instance, a share of heritable subjects forming a part of the stock of a trading company. And things naturally moveable may become heritable by being made to descend to the heir in heritage, as, for instance, books and furniture, or the funds necessary to complete a house begun by the testator but remaining unfinished at his death.

Among things which are moveable are included simple personal debts, shares of companies (public or private), copyrights and patents, bank stock and government stock, and personal bonds, though the latter were formerly heritable, and still remain so, *quoad* the fisk. Debts secured upon the land (except as modified as after-mentioned), rights in their nature moveable but having a tract of future time, and titles of honour and offices continuing after the holder's death, are heritable. But, on the other hand, arrears of heritable debts, of rents and feu duties, of the interest of heritable bonds, &c., are moveable. Leases of land, both as bearing a tract of future time and as being temporary rights affecting land to which the legislature has, in certain respects, given the effect of real rights, are heritable as to succession, though they have always been and still remain moveable as to the fisk. By the Titles to Land Consolidation Act of 1868 all heritable securities are made moveable as regards the succession of the creditor, unless executors are expressly excluded, but they remain heritable *quoad* the fisk in computing *legitim* (see Chapter XIII of this Part) and in questions between husband and wife. In all cases the exclusion of executors from a bond which otherwise would be moveable makes the bond heritable. In a trust which vests heritable subjects in trustees with a right to others to demand delivery or conveyance (i.e. which gives those others a *jus crediti*), the *jus crediti* of the beneficiaries is heritable; though, on the other hand, if the *jus crediti* be merely a right to demand payment of a sum of money or of a share of the general trust fund, it is moveable. Where a truster directs his trustees to expend certain sums of money on heritable subjects, such money is heritable. But an instruction to trustees to sell heritable subjects and convert them into money makes a heritable debt moveable, and hence a claim against the trustees at the instance of the beneficiaries interested is moveable and subject to arrestment. An implied direction to sell, though not a mere power of sale, operates conversion from heritable to moveable. "If", said Lord Chancellor Westbury, "the right to sell is made to depend on the discretion or will of the trustees; or is to arise only in the case of necessity; or is limited to particular purposes, as, for example, to pay debts; or is not indispensable to the execution of the trust; then, in any of these cases, until the discretion is exercised, or the necessity arises and is acted on, or after the particular purposes are answered, or if the sale is not indispensable, there is no change in the quality of the property." A direction to divide a trust estate among a large number of beneficiaries has been recognized as practically necessitating a sale and thus to infer conversion. Conversion will not, however, be readily inferred if the whole residue is to be handed over to one beneficiary. The price of lands sold by the owner (but not by an apparent heir) is moveable. And in bankruptcy the transfer of the debtor's heritable estate to the trustee does not affect the succession to creditors who have claimed in the sequestration.

The System of Land Rights

To understand the Scottish system of Land Rights, it is necessary to remember that those rights are based on the Feudal System, the main principle of which is that the land of the country belongs to the Crown, and that all other proprietors hold their lands, directly or indirectly, as vassals of the king. The grand feature of the Feudal System was, says Professor Menzies, "that it invested the Sovereign with the character of original and supreme proprietor of all land subject to his dominion. By him territories were allotted to his more powerful subjects, who subdivided them among their dependents, and these in their turn made subordinate grants, which descended through successive grades to an extent commensurate with the exigencies of the military following down to its lowest rank." And in his Principles of the Law of Scotland Professor Bell states the principle of our system thus: "The property of land in Scotland is held either directly and immediately under the Crown as paramount superior of all feudal subjects; or indirectly, either as vassal to someone who holds his land, immediately from the Crown, or as sub-vassal in a still more remote degree. The two separate estates of 'superiority' and 'vassalage' are held reciprocally either by the Sovereign and his immediate vassal; or by the Sovereign's immediate vassal and his vassal under him; or successively by vassals still lower, down to the last step of the ownership of land." A holder of land may thus be at once a vassal and a superior—a vassal as regards the granter of his right, a superior as regards the grantee to whom he has sub-feued. Formerly it was in the power of a superior to impose restrictions against the power of sub-infeudation of his vassal, the object of such restriction being generally to compel the vassal to pay a sum of money (known as a "casualty") on the occasion of each sale or transfer of the lands, as well as on the death of the vassal. All such restrictions were, however, removed by the Conveyancing Act of 1874, and now sub-infeudation may go on *ad infinitum*, that is to say, any vassal, whether he be a vassal holding directly of the

Crown, or a vassal of some other person who himself holds directly of the Crown, or a sub-vassal in a still more remote degree, may now dispose of or feu his lands to any extent.

A grant by the Crown, or by a vassal, or by a sub-vassal, does not deprive the granter of a legal estate in the lands forming the subject of the grant, the granter retaining the radical right to the subjects disponed. The radical right which is thus retained, whether by the Crown, by a vassal, or by a sub-vassal, is called the *dominium directum* or superiority, the subordinate right of property acquired by the grantee being known as the *dominium utile*. The granter of the feudal right is called the superior in virtue of the fact that, as regards the grantee or vassal, he occupies the higher rank, and the interest which he retains in the subject of the grant is called the *dominium directum* because, in a feudal sense, it is the more eminent right. The interest which the grantee acquires is called the *dominium utile*, because, though subordinate to that of the granter, it is of the two the more profitable, since it carries with it the right to the exclusive possession and enjoyment of the lands so long as the conditions of the grant are fulfilled.

The fundamental condition of a feudal grant, whether by the Crown to a subject or by one subject to another, was the rendering of certain services, originally military.

Feudal Tenures

Feudal grants have, according to the law of Scotland, been distinguished from one another according to the different tenures or manners of holding under which they have been held. Of these tenures there were originally seven, but of these three are now obsolete. The obsolete tenures were: (1) Ward, in which the grantee was obliged to render military services to his superior, the tenure deriving its name from the fact that during the minority of the vassal his superior was entitled to the guardianship of his person and the management of his affairs; (2) Soccage, the grantee holding his lands on condition that he cultivated other lands belonging to the granter. Such agricultural services were in course of time exchanged for payments of corn and cattle, and finally both services and payment in kind came, in many cases, to be commuted for a fixed rent in money. In this way arose the tenure now most commonly met with in Scotland, viz. feu; (3) Mortmain or Mortification, in which feudal subjects were granted to churches or other societies for religious or charitable purposes.

The existing tenures are four in number—feu, blench, burgage, and booking. Of these the only tenure which requires more than a word of explanation is that of feu, the most common and infinitely the most important. Blench tenure is that by which a vassal holds his lands for an elusory yearly duty, and it appears to have come into existence when feudal manners gave place to a certain degree of industry and civilization. The yearly duty may consist either of money, as a penny Scots, or of some other subject, as a pound of wax or pepper, or the grant may stipulate for the fulfilment of a simple duty, such as that the vassal may supply the king when he passes that way with a basin of water, a towel, and a cake of soap, or that when the king's enemies are observed to be approaching the vassal shall give a blast on the horn—each of these tenures being known at the present time, the latter being that by which the Clerks of Penny-cuik (on the Border) hold their lands of the Sovereign. Burgage is the tenure by which Royal Burghs hold of the Sovereign the houses and lands which lie within the limits of their several charters of erection, and was introduced for the protection of traders who were driven into the towns to secure themselves from the dangers of the open country during the period of feudal warfare. The service in such tenures is watching and warding. Booking is a tenure peculiar to the Burgh of Paisley, but does not differ radically from burgage.

Feus

The tenure of feu, which was introduced to encourage the proper cultivation of the soil, is now that universally in use. Under the system originally in vogue, by which vassals held their lands on condition of rendering their superior military service, agriculture was greatly neglected. To remedy that state of matters, owners of property gave grants of land on condition that the grantees should, instead of serving in war, cultivate and sow the lands of which the granters themselves retained possession. This kind of tenure was, as we have seen, called soccage, but was gradually in practice superseded by feu. For the constitution of the relationship of superior and vassal no writing was, by the earliest customs, required, since in those early days men could generally use their swords better than their pens. At first, therefore, a proprietor himself delivered, on the lands and in presence of his vassals (or, if he had no vassals, then in presence of two strangers whose presence was requisitioned for the occasion), a portion of the lands, as representing the whole grant, to his grantee, who in turn took the oath of fidelity to

his superior. If the actual proprietor was himself unable to be present, then his commissioner or bailie acted in his stead. In course of time it became the practice for the granter or his commissioner, as the case might be, after possession was given, to give a written declaration of the grant, known as a *breve testamentum*, to which the granter or commissioner and the witnesses appended their names or seals. This *breve testamentum* was the forerunner and foundation of the modern feu charter.

A new feudal fee is therefore at the present time most commonly created by the granting of a feu charter by a proprietor of land, whose title has been duly completed thereto, and by the grantee's infeftment on the charter. Infeftment is taken thereunder either by recording the charter, with a warrant of registration thereon in favour of the grantee, in the division of the General Register of Sasines applicable to the lands contained in the charter, or by expeding a notarial instrument, and recording it, with a similar warrant, in such division of the Register. The charter and infeftment together constitute an investiture and create the relationship of superior and vassal between the granter and the grantee. Instead of using a feu charter, the parties may, however, prefer the form of deed known as a feu contract, which, unlike the charter, is a bilateral deed, and is used when the superior wishes to be able to enforce, by direct personal diligence, the obligations undertaken under it. It contains, in addition to the ordinary clauses of a feu charter, an express obligation by the vassal to pay and perform the several duties and obligations due to the superior, and a clause of registration, both for preservation and execution, in virtue of which summary diligence can be used to compel implement of the stipulated prestations contained in the contract. The difference between the two forms is, however, after all, but slight. Under a feu charter the vassal, by acceptance of the feu, puts himself under a personal obligation to pay the stipulated rent or feu duty, and subjects his representatives to pay whatever feu duties may become payable during his possession of the feu. That obligation becomes, on his death, a personal debt. On the other hand, his heir, if he take up the succession, in like manner becomes liable for future feu duties; and if the feu be sold by the original or by any subsequent vassal, then the successor in the feu, after he is infeft, becomes liable for the feu duty and the seller is discharged. The feuar thus binds himself and his successor to a certain extent, and his successors in the feu to a further extent, the obligations being implied though not actually expressed. In the feu contract, on the other hand, the obligations implied in the feu charter are expressed, and the feuar in terms binds himself and his heirs, executors, and successors whomsoever; that is, he binds them in such a way as they would be bound in a feu-charter.

The feu charter or feu contract are thus the instruments used to create a new fee, or, in other words, to create the relationship of superior and vassal. When, however, a fee of feudal subjects has been created, the proprietor, who is duly infeft therein, transmits his right of property therein by another and totally different kind of deed known as a disposition, the object of which is to transmit a fee already constituted to a singular successor (i.e. purchaser) to be held of the same superior in the room and place of the disposer Before, however, considering the disposition, it is necessary to say a word with reference to

Agreements to Sell Land

Such an agreement is binding neither on the seller nor the purchaser until it has been reduced to writing, and the writing must be either holograph or tested, or adopted as holograph by both parties or their authorized agents, and must show *consensus in idem* (i.e. consent with reference to the same thing). If, however, an informal written agreement or an oral bargain to sell land has been concluded and followed by *rei interventus* (i.e. something done on the faith of the bargain, such as payment of the purchase price or part of it), *locus penitentiae* (or the power to resile from the bargain) is excluded. But while in such a case the agreement itself can be proved only by the writ or oath of the party who seeks to deny it, the acts constituting the *rei interventus* can be proved by parole. The rule making written evidence indispensable to the sale of land applies to sales of heritage by auction; and an offerer at a sale of heritage by public auction, who disputes the legality of a sale to a preferred bidder, must found on a writing, holograph or duly attested, as the evidence of his own offer. But although the rule is that allegations impeaching the accuracy of the contents of a written contract relating to heritage made by one of the parties to it can be proved only by the writ or oath of the other party, yet, when a written contract is impugned by one of the parties, and the other, while denying his opponent's averments, admits that the writing does not truly express the terms of the agreement, the latter loses the protection of the rule in question, and proof at large regarding the allegations is admitted.

MAKERS OF MODERN BUSINESS—V

SIR CHARLES WRIGHT MACARA, BART.; born in Fifeshire, 1845; Managing Director of Henry Bannerman & Sons, Ltd., and the Bannerman Mills Co., Ltd.; Manchester, Stalybridge, and Dukinfield; Chairman of the Manchester Master Cotton Spinners' Association since 1892; President of English Federation of Master Cotton Spinners' Associations since 1894; Chairman of Committee of International Federation of Master Cotton Spinners and Manufacturers' Associations since 1904; founded Lifeboat Saturday movement in 1891; Baronet, 1911.

SIR WILLIAM MACKINNON, BART. (1823–93); born at Campbeltown; went to India, 1847; founded British India Steam Navigation Company, 1856; founded Imperial British East Africa Company, which was incorporated in 1888; C.I.E., 1882; Baronet, 1889.

HARRY MANFIELD, M.P.; eldest son of late Sir Philip Manfield; a principal of Manfield & Sons, boot manufacturers, Northampton; Liberal M.P. for Mid Northants since 1906

LORD MANSFIELD (1705–93); born at Scone Hon William Murray, fourth son of fifth Viscount Stormont; graduated at Oxford, 1727; called to English bar, 1730; Solicitor-General, 1742–54; Attorney-General, 1754–56; Lord Chief Justice and created Baron Mansfield, 1756; created Earl, 1776; a great judge who rendered notable service in the development of commercial law

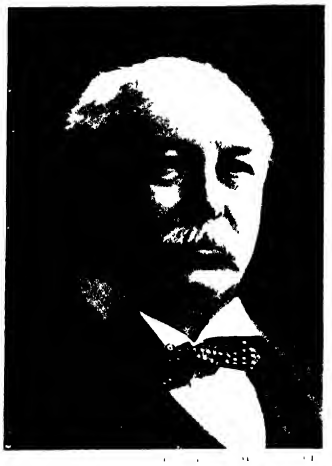
SIR JOHN BLUNDELL MAPLE, BART. (1845–1903); of Maple & Co, Ltd., upholsterers and furnishing warehousemen; Conservative M.P. for Dulwich, 1887–1903; Baronet, 1897

SIR WILLIAM MATHER; born in Manchester, 1838; Chairman of Mather & Platt, Ltd., engineers; Liberal M.P for S Salford, 1885–86, Gorton, 1889–95, Rossendale, 1900–04; knighted, 1902.

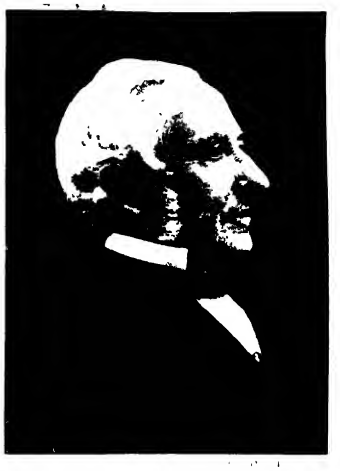
LORD MASHAM (1815–1906); born Samuel Cunliffe Lister near Bradford; developed wool-combing and silk-spinning industry in Bradford; Baron, 1891.

LORD MOUNT-STEPHEN; born George Stephen at Dufftown, Banffshire, in 1829; went to Canada, 1850; successively Director, Vice-President, and President of Bank of Montreal; head of Canadian Pacific Railway till 1888; Baronet, 1886; Baron, 1891; G.C.V.O., 1905.

LORD NORTHCLIFFE; born Alfred Charles William Harmsworth in County Dublin, 1865; successful newspaper proprietor (*Daily Mail*, *Times*, etc.); Baronet, 1904; Baron, 1905.



SIR CHARLES W MACARA BART



SIR WM MACKINNON BART

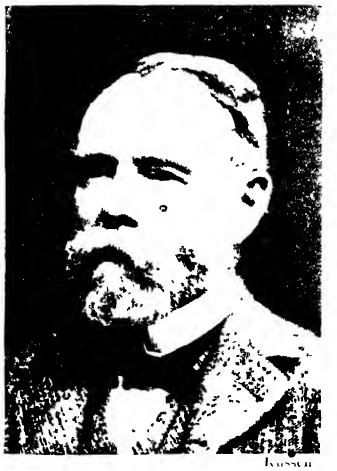
HARRY MANSFIELD MP

LORD MANSFIELD

SIR J B MAPLE BART

SIR WILLIAM MATHER

LORD MASHAM



LORD MOUNT-STEPHEN

LORD NORTHCLIFFE

Agreements to sell lands are usually embodied in one of these forms: Missives of Sale, Minutes of Sale, or Articles of Roup, and relative minutes. Missives of Sale consist of an offer to sell and a relative acceptance. To be probative, such documents must show *consensus in idem* both as regards the subjects and their price, and they must be probative or holograph of the parties or their agents. Improbative missives, however, will be valid if followed by *rei interventus*. The usual rules of law with regard to the period during which acceptance may competently be made, &c., apply. The contents of an ordinary Minute of Sale, which is usually adopted when for any reason a disposition cannot be granted at the date of sale or when the seller's title is doubtful, are that the vendor agrees to sell and the purchaser to buy certain subjects on the following or similar terms: That the price is a sum named, on payment of which the seller undertakes to deliver to the purchaser a disposition and a valid title free of encumbrances; that the purchaser shall, after the date of entry, have right to the rents, &c.; and that any question in dispute shall be referred to an arbiter. When lands are sold by public auction (or public roup), the conditions of sale are contained in the Articles of Roup, which set forth, *inter alia*, the upset price, the excess which each offer is to be above the immediately preceding offer, the term of entry, the penalty to be enacted on failure to deposit the purchase price, the way in which the expense of transfer is to be borne, a reference to arbiters, and so on. When subjects have been duly exposed under articles of roup and a sale effected, a docquet, containing the offers and a minute of preference of the purchaser, signed by the offerers and the judge of the roup, is appended to the articles. If no sale is effected and the sale is adjourned, the subjects are re-exposed for sale at a future date, the terms of exposure being embodied in a minute of exposure, appended to the articles and minute of adjournment.

Construction of Agreements for the Sale of Heritage

Agreements to sell land are subject to the following rules: (1) If the contract declares that the sale will be void if the price is not paid by a certain date, non-payment will be a good ground for the seller cancelling the sale. (2) If there be undue delay in paying the purchase price, the seller not being in default, the sale may be declared void by the Court without any stipulation to that effect. (3) The offer of a price implies the offer of interest on the price from the date of possession. (4) Where the purchaser has been infeft under a disposition, but the price of the subjects has not been fixed or paid, the purchaser is bound to denude, if the parties cannot come to an agreement as to the price. (5) The seller has a preference over other creditors of the purchaser, if after a completed sale he has signed but not delivered a disposition to the purchaser who is in possession of the subjects of sale. (6) Where a formal conveyance has been executed and delivered in implement of a contract of sale, it becomes the sole measure of the rights and liabilities of the parties. (7) The purchaser is entitled to the precise subjects sold free of conditions, reservations, or restrictions not specially stipulated for, or at least not in the circumstances reasonable or in the knowledge of the purchaser at the date of the agreement. (8) Where a seller after contracting to sell the subjects to one person subsequently sells it to another, the first purchaser is entitled to reduce the second purchaser's title if he can show reasonable grounds for assuming that the second purchaser knew of the prior agreement to sell. (9) In virtue of missives, minutes of sale, or articles of roup and relative minute, an action of implement is competent against any party who declines to fulfil his obligation.

Sales or Dispositions of Heritage

As we have seen, a fee of feudal subjects is created either by a feu charter, a feu contract, or a feu disposition. When a fee of feudal subjects has been validly created, the proprietor who is duly infeft therein transmits his right of propriety to another by a deed which is known as a disposition. The feu charter or feu contract is the deed by which is created a subaltern fee in the person of someone other than the original proprietor, whether that person be the Sovereign or someone holding under him, whilst the ultimate object of the disposition is to transmit a fee already constituted to a singular successor (i.e. a purchaser) to be held of the same superior in room and in place of the seller or disponer.

The disposition in its present form is regulated by the provisions of the Titles to Land Consolidation Act, 1868, as modified by the enactments of the Conveyancing Act of 1874. The following is the form which the deed now takes:—

> I, A. B. (*designation*), heritable proprietor of the subjects hereinafter disponed, in consideration of the sum of £ ..... sterling, instantly paid to me by C. D. (*designation*) as the price thereof, of which sum I hereby acknowledge the receipt and discharge the said C. D., do hereby sell and dispone to the said C. D. and his heirs and assignees whomsoever, heritably and irredeemably, ALL and WHOLE (*here describe subjects con-*

veyed either particularly or by reference in terms of Schedule O of the Conveyancing Act of 1874), together with my whole right, title, and interest, present and future, therein (*if the subjects are to be held under any burdens not already constituted, these will be here particularly inserted; and if held under burdens already constituted, these will be described either particularly or by reference in terms of Schedule D of the Titles to Land Consolidation Act, 1868*), with entry at the term of ....; and I assign the writs and have delivered the same according to an Inventory hereto annexed and subscribed by me as relative hereto (*or otherwise, as may be desired*); And I assign the rents; and I bind myself to free and relieve the said C. D. and his foresaids of all feu duties, casualties, and public burdens; And I grant warrandice; And I consent to registration hereof for preservation; In witness whereof, &c. &c.

If this form be compared with that of a feu charter, it will be found that the dispositive clause bears that the disponer "sells and dispones" the subjects, whereas that clause in a feu charter bears that the superior "sells and in feu farm dispones" the subjects. Again, in a feu charter there is a clause to the effect that the lands are disponed in feu to be held of the vassal of the superior—a claim which, of course, in a disposition would be wholly inappropriate. Further, the feu charter stipulates for the termly payment of a sum of money in name of feu duty—a claim which equally with the last would be inappropriate to a disposition.

Now, as we have seen, the superiority, or *dominium directum*, is the right which the Crown, as overlord of all Scotland, or subject superiors as intermediate overlords, enjoy in the land held by their vassals. It is not, as we have seen, a right of use of the lands, but merely a right to the civil rights of feu duty, &c. This right of superiority is held by the Crown, or by individuals, as a consequence of their having been formerly vested, in their own persons or that of their ancestors or authors, in the property of the land; and they continue to hold a complete title, not only to the superiority but to the lands themselves—this title being qualified in its effects by the feu charter which the vassal holds, and in virtue of which he enjoys the *dominium utile* of the lands. When, therefore, a superior wishes to convey his right to another, the regular form is, not to dispone the superiority only, but to dispone the lands themselves, excepting from the grant the right of feu which the vassal possesses. When the right of property, as distinguished from the right of superiority, in lands has been separated from the right of superiority, the two rights may be consolidated by the superior and the proprietor executing and recording a minute in the form specified by the Conveyancing Act of 1874. A superior cannot, however, interpose another superior between himself and his vassal without the latter's consent. Nor can a superiority be split without the vassal's consent to the effect of making him hold of more than one superior, and thus become liable in more than one set of prestations. But if two superiorities, held under separate titles, and not blended into one single estate, accrue to one individual, he may convey them separately.

Marriage Contracts and Trusts

The purpose of marriage contracts is the settlement of provisions in favour of the spouses and the children to be born of the marriage, and the securing of such provisions against future acts of the spouses or the diligence of their creditors. By an ante-nuptial contract of marriage spouses can settle their rights and interests in each other's estates, but they cannot agree to conditions either inconsistent with the conjugal relations, or against public law, or in violation of morals. Generally, contracts of marriage either exclude or abridge the legal rights of the spouses or the children, and in lieu thereof substitute conventional provisions. It is a common practice to create a marriage contract trust in order to secure provisions against the husband's debts and deeds, and to protect the wife's property from being given by her to her husband. When a contract of marriage is constituted by a trust, the deed usually contains, besides the usual clauses, a conveyance by the spouses of their respective estates, heritable or moveable or both, and a declaration of the trust purposes for which the respective estates are to be held; as, e.g., in the case of the husband's estate, for a liferent to himself, liferent to his wife on his death, fee to the children in such proportions as he may appoint by writing, or to them equally; but if no children survive the dissolution of the marriage, the fee to be reconveyed to him, if he be the survivor of the spouses, or to his heirs in the event of his wife being the survivor; and, e.g., in the case of the wife, for a liferent to herself, exclusive of her husband's *jus mariti* and right of administration, liferent to her husband on her death, fee to children, &c. &c. The powers to be possessed by the trustees are also defined, as e.g., to invest the trust funds, to advance a part of the estate to which a child may be prospectively entitled, to sell the estate, &c.; and a clause is added declaring that the provisions to the spouses and the children to be born of the marriage are to be in full discharge of their legal rights. A post-nuptial marriage contract has generally the same effect, so far as the wife and

family are concerned, as an ante-nuptial contract, though so far as creditors of the husband are concerned there are some differences between the two contracts. When the granter is infeft in lands conveyed in a marriage contract, whether post- or ante-nuptial, a feudal title may be made to them in favour of the trustees. If the granter be not infeft, but is possessed of an unfeudalized title, the marriage contract is treated as an assignation, a title in favour of the trustees being made up by recording what is known as a notarial instrument.

A valid testamentary disposition of moveables could, even before the Titles to Land Consolidation Act of 1868, be effected in these terms: "I leave all my moveable estate to A. B.". Since the Act of 1868, the owner of heritable and moveable estate may make an effectual testamentary disposition thereof by simply using the following words: "I leave all my estate, heritable and moveable, to A. B.". The Act of 1868 placed heritage in the same position as moveables where dealt with in a testamentary deed, and consequently direct words of conveyance are no longer, as they formerly were, essential in a testamentary deed relating to heritage. If, however, a testamentary deed is intended to convey heritage, it must contain words applicable to heritage, or at least show clearly that the testator intended to dispose of his whole estate, heritable as well as moveable. When equivocal words are used in a testamentary deed, the question whether the maker of the deed intended to convey heritage will be determined from the context. Again, a deed bequeathing a person's "effects" has been held not to include heritage, because in its ordinary acceptation that word means moveables, and more especially corporeal moveables; and if a testamentary conveyance contains words which are *prima facie* applicable to moveables only, and no other meaning can on account of the context be ascribed to them, the deed will be held not to convey heritage. The words "estate" or "means and estate" will generally be sufficient to convey both heritage and moveable property, unless such a construction is clearly repugnant to the context of the deed.

A testator may bequeath his estate directly to beneficiaries or to trustees in order that they may hold and distribute it as he directs. In the former case the deed takes the form of a general disposition and settlement, in the latter of a trust disposition and settlement containing *inter alia* clauses declaratory of the purposes of the trust, as, for example, (*a*) for payment of debts and expenses; (*b*) for payment of a liferent of whole or part of estate to the truster's widow: (*c*) for payment of certain legacies; (*d*) for conveyance to his eldest son, at a certain time, of his estates, or part of them; (*e*) for payment of certain sums for the education and maintenance of his children; and (*f*) for division of the trust funds among his children at a certain time. The trustees are usually appointed the testator's executors, and tutors and curators to such of the children as may be in minority or pupilarity at the time of his death. The deed further usually contains a clause conferring on the trustees certain powers over and above those allowed them by statute, and a declaration that the provisions made are to be in substitution of the legal rights of the widow and children. The trustees under a trust disposition and settlement make up their title to the lands very much in the same way as in the case of an ordinary disposition, and thereafter they possess the lands in the same way and to the same extent as the testator himself did.

Heritable Securities

The deeds most commonly used for creating a security over heritable property are deeds imposing what are known as real burdens on the land, such as contracts of ground annual, bonds and dispositions in security, containing both a personal obligation and a disposition in security, and dispositions *ex facie* absolute, but qualified by a back-bond or back-letter. With the exception of ground annuals, the remaining deeds have been dealt with under the head of "Mortgages". We have already seen that where land is sold in consideration of a certain yearly payment, the contract between the seller and the purchaser is generally embodied either in a feu charter or a feu contract. Where, however, lands could not be sub-feued by the proprietors, as in the case of lands held under the tenure known as burgage prior to 1874, or of lands held under a valid prohibition against sub-infeudation (which, as we have seen, is no longer competent), a contract for the sale of the lands was embodied in a contract of ground annual or a long lease. Now, as prior to 1874, a contract of ground annual (or a long lease) may still require to be used where lands are held under prohibitions against sub-infeudation created before the commencement of the Conveyancing Act of 1874. It is, however, quite frequently used when there is nothing to prevent the granting of a valid feu right. The contract of ground annual may be created by a unilateral deed, though a bilateral deed is now the more frequently used. The contract contains *inter alia* a dispositive clause containing a description of the subjects, and the real burdens, or a reference thereto, under which the subjects are held in virtue of prior investitures, and a declaration of

the ground annual and other conditions on which the purchaser is to hold the subjects, with a personal obligation by the purchaser to pay the ground annual and perform the other conditions stipulated for. There is, further, in security of the payment of the ground annual, a disposition by the purchaser to the seller of the land disponed under the contract, together with the buildings erected or to be erected thereon, under the conditions and burdens specified in the contract, as a real security or burden on the land for the payment of the stipulated annual payment. In the absence of stipulation to the contrary, the personal obligation for payment of the ground annual remains with the granter, even although he has transferred the subjects to a third party; and whilst the burden of the ground annual transmits against the land, the personal obligation for payment does not transmit against a purchaser. The deed is recorded in the appropriate Register of Sasines, and such infeftment gives the seller not only a real security to the ground annual in his favour, and a right to raise a petitory action, but also a right to poind the ground and to raise an action of maills and duties. A ground annual is transmitted to a purchaser by an assignation, which requires registration for its completion, and heirs and other successors complete their titles to a ground annual as to a bond and disposition in security. Ground annuals, whether redeemable or irredeemable, are heritable in every respect *quoad* succession, though ordinary real burdens where executors are not excluded are now moveable as to succession, the reason being that ground annuals were and are often constituted to take the place of feu duties.

Entails

The law relating to entails is so complex and so diffuse, that nothing more than the briefest notice can be attempted here. An entail, strictly so called, is a disposition of lands, containing in addition to the ordinary feudal clauses (1) an express destination to a special series of heirs; and also (either expressly or constructively) (2) prohibitory clauses against (*a*) alienation, (*b*) contracting debt, and (*c*) altering the order of succession; (3) an irritant clause, which annuls the act prohibited; and (4) a resolutive clause which annuls the right to the estate of the heir contravening the provisions of the entail. Entails may be embodied in a disposition, in a marriage contract, in a testamentary deed, or generally in any deed which can be employed to convey lands or embrace a conveyance of lands. There may be an entail of lands held in feu or burgage—houses, theatres, salmon fishings, a *pro indiviso* share of a feudal subject, or even of the radical right to land which a person has after granting a trust deed for behoof of his creditors. Moveables cannot, of course, be made the subject of an entail. Funds held in trust and directed to be entailed are treated as entailed land, and funds obtained by the sale of entailed estate are, in certain circumstances, treated as surrogates for the lands sold. The life interest in the estate of an heir in possession under a strict entail may be assigned by him or attached by his creditors. Where an heir of entail now wishes to use his interest in the entailed estate as security for debt, he generally grants a bond and assignation and disposition in security.

AUTHORITIES.—The textbooks of *Williams*, *Goodeve*, *Edwards*, and the smaller books of *Strahan* and *Kelke* on "Real Property".
Lewin and *Underhill* on "Trusts".
Goddard, and *Gale*, and *Innes*, on "Easements".
Scottish Land Laws.—Craigie on "Scottish Law of Conveyancing"; "Green's Encyclopædia of Scots Law".

CHAPTER XXI

WATER, GAS, AND ELECTRICITY SUPPLY

Introductory—Water—Gas—Electricity

INTRODUCTORY

The supply of Water, Gas, and Electricity are considered in this chapter as affecting the ordinary consumer. The provisions under which powers are obtained by undertakers for the supply of each are similar in origin and effect, but presenting considerable differences in their operation, they must be treated separately. It will not be attempted to deal at any length with the various steps by which undertakers obtain statutory powers, as it will be recognized that the chief interest of the subject for the present purpose is from the consumer's point of view.

In all cases the undertaking is looked upon as one in which an entire freedom of trading in the interests of the undertakers should not be allowed. There are, therefore, provisions as to keeping accounts and limiting the amount of profits which can be made and thus compelling the reduction in price of the article supplied, and for the acquisition of the undertakings by local authorities, on which authorities powers are also frequently directly conferred.

The local Act or Order must be looked to for the particular conditions regulating any supply.

WATER

It has been estimated by Mr. Balfour Browne, K.C., that water is now collected and sold to the value in England alone of nearly £8,000,000 annually, at a cost to the consumer of about 2*d.* per ton.

The supply of water is usually in the hands of a company or the local authority rather than a person or firm, and the acquisition or the establishment of water undertakings by local authorities is now much commoner than was once the case.

It is necessary that the supplying authority should be acting under statutory powers, for without statutory powers it would be impossible for the authority to break up the streets for the purpose of laying the connecting pipes, or to levy a rate to cover the cost of supply. It is therefore usual for water companies to acquire powers, either by a Provisional Order or by a special Act. The Waterworks Clauses Acts, 1847 and 1863, have provided general powers for water companies, and these are incorporated by the special Act, with such variations as may be required and conceded. It is these general powers which call for some examination.

The supply by local authorities is provided for under the Public Health Act, 1875, in cases where no statutory company exists within the area of supply (see p. 59). In Scotland and Ireland similar powers exist in towns and country districts.

The Gas and Water Facilities Acts, 1870 and 1873, provide for Provisional Orders from the Board of Trade being obtained by any company, companies, local authority, or person. Such Provisional Orders must be confirmed by Parliament. The powers that can be conferred by a Provisional Order are to construct or maintain and continue waterworks and works connected therewith and to supply water, to raise additional capital necessary for such purpose, and to enable two or more

companies or persons duly authorized to supply water to enter into agreements for supply within the same or adjoining districts. The Board of Trade may hold a local enquiry upon the application for a Provisional Order. The Provisional Order does not give authority to take land compulsorily, a private Bill being necessary for this purpose; but a local authority must not proceed by private Bill when sufficient powers could be obtained by Provisional Order.

Wherever it is proposed to abstract water from a stream, the Standing Orders of the two Houses require certain notices to be given to owners, lessees, or occupiers of mills and factories or other works using the waters for twenty miles below the point of proposed abstraction. Where water is taken from a watershed or collecting ground, compensation is to be provided for, generally in water. We have noticed elsewhere the ordinary rights to underground water. (See Chapter XX of this Part.)

It has been recommended by a Joint Select Committee of both Houses of Parliament that an organization should be created, empowered to enquire into the whole question of surface and underground water supplies from a comprehensive standpoint, to supervise the future allocation of supplies, and to serve as an authoritative adviser of Parliament in the consideration of particular schemes. Considering the immense importance of the water question to consumers generally and to owners of land, it is more than surprising that nothing has been done.

General Powers as to Water Undertakings

The Waterworks Clauses Acts apply to companies and local authorities when the special Act or Provisional Order incorporates them, but additional clauses are now usually inserted.

The undertakers are authorized, under the superintendence of the officers of the local authority, to break up streets within the limits of their Act for the purpose of laying pipes, conduits, &c., and supplying water to the inhabitants, making good any damage done. They are not authorized to enter upon private land without the consent of the owner, and must serve notice on the local authority before proceeding to break up any street, which must be reinstated without undue delay.

Supply of Water

The undertakers must provide and keep in the mains a supply of pure and wholesome water sufficient for the "domestic use" of all the inhabitants of the district within their limits entitled to demand and willing to pay for a supply. Inhabitants willing to pay a water rate are entitled to demand a supply, constantly laid on at such a pressure as will make the water reach the top story of the highest houses within the district, unless the special Act or Order provides otherwise, as it usually does. The undertakers must cause pipes to be laid down and water to be brought to every part of the district within their limits when they are required by owners or occupiers of houses in that part whose aggregate annual water rate would be not less than one-tenth part of the expense of providing and laying down such pipes; but such owners or occupiers must execute an agreement binding themselves to take such supply of water for three successive years at least.

If for twenty-eight days after demand in writing is made, with the tender of the signed agreement to the undertakers to take and pay for a supply of water for three years or more, the undertakers refuse or neglect to lay down pipes for and provide such domestic supply, they must forfeit the amount of the rate to the owners and occupiers, and are subject to daily penalties, unless the non-supply is due to frost, unusual drought, or other unavoidable cause or accident.

Fire-plugs

The undertakers must provide and keep constantly laid on, unless prevented by the same cause, or during necessary repairs, in all the pipes to which any fire-plug is affixed, a sufficient supply of water for cleansing sewers and drains, watering streets, supplying public pumps, baths, or washhouses. The rate for such supply is to be agreed between the undertakers and the local authority, or settled by justices or the sheriff.

The undertakers, at the request of the urban authority, must fix fire-plugs in the main and other pipes belonging to them at convenient distances and places, and must keep the fire-plugs in repair and deposit keys at any public fire-engine house, putting up a public notice in a conspicuous place in each street to show the situation of the fire-plug. The cost of fire-plugs and their maintenance is to be provided by the local authority. Fire-plugs must also be placed near factories at the request of the owners. All the pipes to which fire-plugs are fixed must be kept charged with water, except for the reasons before stated, and for extinguishing fire any person may use such water without making compensation.

Penalties are imposed for the refusal to fix fire-plugs and for the occasional failure of supply.

Water for Non-domestic Purposes

Where the undertakers are authorized by the special Act to supply water other than for domestic purposes, they are not to be liable for failure in that supply, unless it is expressly stipulated under any agreement, to any penalty or damages for non-supply due to frost, unusual drought, or other unavoidable cause or accident.

Meters

Where the undertakers are specially authorized to supply water by measure, they may let meters, pipes, or apparatus for hire. The officers of the undertakers may enter at reasonable times any house, building, or land for the purpose of ascertaining the quantity consumed by the meter, and to remove any meter, instrument, pipe, or apparatus which is their property.

Cutting-off Supply

The undertakers may cut off the supply of any person who does or causes or permits to be done anything in contravention of any of the provisions of the special Act, as well as on non-payment.

Communication Pipes

At the request of the owner of any dwelling house, in any street in which the undertakers' pipes have been laid down, of an annual value not exceeding £10, or upon the request of the occupier with the consent in writing of the owner or his agent, and upon payment or tender of the proportion of water rate payable in advance, the undertakers must lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes. They must keep the pipes in repair, and the occupier is entitled thereupon to have a sufficient supply of water for his domestic purposes. The undertakers may charge for such pipes and works, in addition to the water rate, a reasonable annual rent.

Penalties are imposed upon undertakers in case of refusal or neglect for seven days.

If the occupier refuses to pay for a supply of water, or if the house is unoccupied for twelve months, the undertakers may demand payment from the owner; and if he refuses to pay, they may remove the pipes and other works, and they may recover the balance of their debt in the same way as water rate. The owner may purchase the communication pipes and other works from the undertakers.

The owner or occupier of any dwelling house or part of one within the district, who wishes to have water from the undertakers' waterworks brought on his premises, and who has paid or tendered to the undertakers the portion of the water rate payable in advance, may himself open the ground between the undertakers' pipes and his premises, with the consent of any intervening owner or occupier, and lay communication pipes of approved strength and material, if he gives fourteen days' notice of his intention to the undertakers. The works must be carried out under the superintendence of their surveyor. The bore of such service pipes must not, without the consent of the undertakers, exceed ½ in., or any other limit which may be prescribed.

Service pipes belonging to the owner or occupier may be removed by him if he gives six days' notice to the undertakers. Removal without giving notice is subject to a penalty of £5 and the amount of damage done. To effect the connection, power is given to inhabitants to break up the streets under proper provisions.

Water for "Domestic Purposes"

Every owner or occupier of any dwelling house or part of a dwelling house within the limits, after laying such communication pipes and paying or tendering the water rate, is entitled to demand and receive from the undertakers a sufficient supply for his "domestic purposes". "Domestic purposes" is a term on which a good deal of litigation has taken place. It will be sufficient here to say that the Act of 1863, section 12, provides that a supply for domestic purposes is not to include a supply of water for cattle, or for horses, or for washing carriages, where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose.

The question depends on the use to which the water is put, and sometimes on the terms of the local Act. Supply to a fixed bath in a house is not subject to extra payment unless the undertakers are specially empowered so to charge, nor is a supply to a laundry in connection with a private school a "trade" supply.

Waste

If the special Act provides that water need not be constantly laid on under pressure, the undertakers may compel the person supplied to provide a proper cistern, with ball and stopcock, which must be kept in good repair so as effectually to prevent waste. If the cistern is not so

kept, the undertakers may cut off the supply and may repair the cistern and charge the expense upon the owner or occupier, and the person in default is also subject to a penalty.

The surveyor of the undertakers has authority between nine and four o'clock in the day to enter houses to examine if any waste or misuse of water is taking place.

If owners or occupiers allow strangers to use the water, except for the purposes of extinguishing fire, there is a penalty of £5. A person wrongfully taking or using water belonging to the undertakers is liable for each offence to a similar penalty. A penalty of £5 is also provided in the case of wilfully or negligently causing waste through non-repair or misuse of any pipe, &c., or for pollution of any water through any pipe. Penalties are incurred if any person uses the water contrary to agreement, and for making an unauthorized extension or alteration of the pipes.

Anyone who takes, except by agreement, water from any reservoir, watercourse, or conduit belonging to the undertakers, or from any pipe leading thereto, or cistern, other than from a public supply, is liable to a penalty of £10. Penalties are also provided for the destruction of any locks, valves, or other property of the undertakers.

Fouling of Water

A penalty of £5 and a daily penalty of 20*s.* are provided for cases where persons cause any pollution of the water supply in any stream, aqueduct, reservoir, or other waterworks by bathing, washing, or throwing anything in the water, or causing any contaminating water to flow into it. A penalty of £200 and a daily penalty of £20 is provided in a case where a gas company allows any substance produced in making or supplying gas to flow into the undertakers' works. Any maker of gas who causes the water to be fouled by gas is subject to a penalty of £20 and a daily penalty of £10 after notice.

Power is given to water undertakers to examine gas pipes to see if there is any escape.

Water Rates

Water rates, unless it is otherwise provided by the special Act, are payable by and recoverable from the person requiring, receiving, or using the supply of water. Rates are payable according to the annual value, in the Metropolis the rateable value, of the tenement supplied, and any dispute as to such value must be determined by two justices.

When several houses or parts of houses in separate occupation are supplied from one common pipe, each owner or occupier is liable to pay the same rate as if the several houses or parts of houses had been supplied by a separate pipe.

Rates are payable quarterly in advance in England and Ireland at Christmas Day, Lady Day, Midsummer Day, and Michaelmas Day; and in Scotland at Martinmas, Candlemas, Whitsunday, and Lammas. The first payment is due when the communication is effected or the agreement to take the supply is made. When notice is given to discontinue, or in the case of removal, between two quarter days, payments are to be made to the next quarter day.

The owners of all dwelling houses or parts of dwelling houses separately occupied, where the value does not exceed £10, are liable for payment of the rates instead of the occupiers. Owners are not liable, however, for unoccupied premises, though the water is laid on.

If any person neglects to pay his water rate, the undertakers may stop the supply by cutting off the pipe to such premises, and recover the rate due, with the expenses of cutting off. Where the water rate is payable by the owner and not the occupier, the company must not cut off the supply for non-payment of the rate, unless requested by the landlord when the tenant refuses to quit after notice; but the rate, with interest, becomes a charge upon the dwelling house in priority to all other charges affecting the premises, or may be recovered with costs from the owner. A daily penalty of £5 is imposed upon a company cutting off the supply in contravention of this requirement.

Profits

It is provided that the profits of a water undertaking to be divided in any year shall not exceed the rate prescribed, or, where no rate is prescribed, 10 per cent. It is usual, however, when companies go to Parliament for additional powers, to fix the rate at 7 on the ordinary stock and 5 per cent on the preference. This is the prescribed rate, unless a larger dividend is necessary at any time to make up a deficiency on previous dividends. If the profits in any year amount to a larger sum than is sufficient for this purpose, the excess is to be invested and form a reserve fund, only to be resorted to for extraordinary claims. When the reserve fund equals an amount prescribed, or one-tenth of the nominal capital of the undertakers, the interest may be applied to the purposes of the undertaking. If profits are less than the prescribed rate, the deficiency may be taken from the reserve fund; if the profits are more than the prescribed amount,

then a rateable reduction is to be made in the price of water.

New capital must generally be offered by auction, as in the case of gas shares (see page 57).

An annual account is to be made up by the undertakers and sent to the Clerks of the Peace in England and Ireland, and to the Sheriff Clerks in Scotland. The accounts are open to public inspection.

Copies of the special Act must be kept by the undertakers at their offices and also deposited with the Clerks of the Peace and the Sheriff Clerks.

Additional Clauses

It is now customary for other clauses to be inserted in Water Bills.

These include powers to make agreements with owners for preserving the purity of the watershed and waters collected; powers prescribing that fittings must be so constructed as to prevent contamination; provisions that rates shall be payable by owners of small houses let on short tenancies, for supply to be by meter to houses where water is used partly for trade purposes, that there shall be no obligation to supply more than one house by means of the same communication pipe, for notices of discontinuance to be given in writing, and notice of connecting and disconnecting meters, for the letting and selling of meters and fittings, and for the supply and repair (but not manufacture) of fittings, baths, &c., making by-laws as to waste, misuse, and contamination, and laying of pipes in streets not public, and contracting for the supply of water in bulk.

Supply by Local Authorities

The general powers of local authorities in England and Wales in relation to the supply of water are contained in the Public Health Act, 1875. Any urban authority may provide their district or any part, and any rural authority any contributory place or part of such contributory place, with a supply of water, proper and sufficient for public and private purposes. For these purposes the authority may construct and maintain waterworks, dig wells, and do any other necessary acts; or take on lease or hire waterworks, and, with the sanction of the Local Government Board, purchase any waterworks or water rights within or without the district, and any rights, powers, and privileges of any water company. They may also contract with any person for a supply of water. It is not competent, however, for a local authority to supply water within the limits of a statutory water company, except for scavenging or sanitary purposes, unless there is default by that company in the supply. Water rights cannot be compulsorily acquired; but land may be compulsorily acquired and used for pumping. A local authority must not injuriously affect any stream, reservoir, canal, or river without the written consent of persons entitled.

Before commencing to construct waterworks within the limits of supply of any company, a local authority must give notice in writing to that company, and if the company are able and willing to supply water, proper and sufficient for all reasonable purposes, the local authority must not proceed. It is usual to insert in the special Act that the local authority shall have power to supply if the company fail within a certain period, generally five years.

It is provided that two months' notice must be given of a local authority's intention to construct reservoirs, so that any person who would be affected by the contemplated works may object, and, if necessary, a local enquiry may be held by the Local Government Board.

Where a local authority supply water they have the same powers for carrying mains as they have for carrying sewers within their district. Such a local authority must provide and keep a supply of pure and wholesome water, and where they have laid pipes, the water must be constantly laid on at the pressure on the conditions which we have seen are applicable to other undertakers.

The authority has power to charge water rates or to supply water by measure and enter into agreements, and generally the powers of the Waterworks Clauses Acts are incorporated with the Public Health Act.

A local authority empowered to supply water within their district may supply an adjoining district, with the sanction of the Local Government Board.

An urban authority may require houses to be supplied with water where, on the report of their surveyor, there is not a proper supply and such a supply could be furnished at a rate not exceeding the water rate authorized by any local Act, or 2*d.* a week or other amount determined by the Local Government Board. A rural authority must see that every occupied dwelling house within their district has within a reasonable distance a wholesome water supply for domestic purposes; and an urban authority may acquire the same power.

The local authority may, if they think fit, supply water for public baths or washhouses, or for trading or manufacturing purposes, on terms agreed,

or construct waterworks for the gratuitous supply of any baths or washhouses established otherwise than for private profit, or supported out of any poor or borough rates.

It is the duty of every urban authority to cause fire-plugs and all necessary works for securing a sufficient supply of water in case of fire to be provided and maintained and the situation indicated.

Penalties are provided if water is polluted by gas. Local authorities, and in some special cases companies, have power to take proceedings to prevent the pollution of streams, and to close polluted wells, cisterns, &c.

Any water company may contract to supply water or lease their waterworks to a local authority, and by special resolution may sell or transfer their undertaking on terms agreed.

The surplus profits of a water undertaking in the hands of a local authority, after providing for loans and sinking-fund charges, are generally devoted to the relief of the rates. The accounts must be kept separate from those of any other undertaking.

In England and Wales nearly all the non-county and most of the county boroughs, as well as about half the urban districts, have either established or acquired waterworks.

In Scotland many Town Councils, County Councils, and Joint Boards, and in Ireland, Corporations, Urban District Councils, and Joint Boards have put the supply Acts in force, as well for water as for gas.

London

The supply of water in the metropolis is governed by the Metropolis Water Acts, the Acts of 1852 and 1871 being the principal. The Act of 1852 restricted the sources of supply in the metropolis of water drawn from any tidal portion of the Thames below Teddington Lock. The Acts provide for filtration and for constant supply, and generally the conditions of supply in the metropolis.

The London Water Supply furnished a subject of much controversy and many official enquiries. Royal Commissions and Select Committees considered the subject from 1867 onwards, and various proposals were put forward from time to time. In 1902 the Metropolis Water Act constituted a Water Board (see Chapter IV. of this Part), and transferred the undertakings of the various Metropolitan Water Companies to that Board, providing for payment by Water Stock.

GAS

The supply of gas is undertaken subject to conditions similar to those on which water is supplied throughout the United Kingdom, either under the powers of a special Act or Provisional Order, or by a local authority proceeding under a Provisional Order and the powers of the Public Health Act, 1875. The Gasworks Clauses Acts, 1847 and 1871, provide a general code which is usually incorporated with the special Act or Order, with any necessary exceptions. New clauses, however, are now inserted in all bills relating to powers and obligations which at the time of the passing of those Acts were not of importance. The earliest statute dealing with the supply of gas is the Lighting and Watching Act, 1833, but as it is now only in force in rural parishes, it is of comparatively small importance. Parish councils may adopt this Act for the purpose of lighting the parish with gas or other illuminant.

By the Gasworks Clauses Acts power is given to the undertakers, under the superintendence of the local authority, to open and break up streets for the purpose of laying pipes in the same way that water companies are empowered to effect their objects, with the same duties and consequences.

Supply of Gas

The undertakers may contract to supply any public or private building, and to provide pipes, burners, meters, lamps, &c., and for their repair, and may also enter into any contract with a local authority for gas lighting on terms agreed. They may let for hire gas meters, which are not liable to be distrained for rent or to landlord's hypothec in Scotland, and at reasonable times their officers may enter for the purpose of ascertaining the quantity of gas consumed.

When required so to do by the owner or occupier of any premises situate within 25 yards or other prescribed distance from any main, the undertakers are bound to give and continue a supply of gas to such premises under the prescribed pressure. They must furnish and lay any pipe that may be necessary on the following conditions: So much of the cost of the pipe as is laid upon the property of the owner, or as may be laid for a greater distance than 30 feet from any pipe of the undertakers, must be defrayed by the owner or occupier; the owner or occupier requiring the supply must serve a notice on the undertakers, specifying the place and time, and enter into a written contract to pay

for a supply for at least two years, so that the amount payable shall not be less than 20 per cent per annum on the outlay incurred in providing the pipe, and give security for the payment of the cost of the pipe furnished by the undertakers and the supply of gas. The undertakers may, after they have given the supply, by written notice require security for the payment of such moneys, and on failure discontinue the supply to such premises.

Consumers may be compelled to use meters which the undertakers supply, the owner or occupier giving security for the payment of the price or rent.

Meters are not to be connected or disconnected without notice to the undertakers, and a consumer must keep his meter in proper order. Undertakers may let for hire any meter and any fittings thereto, and in that case must keep the meter in repair.

The register of the meter is *prima facie* evidence of the quantity of gas consumed, but any difference may be determined by two justices on the application of either party. The officers of the undertakers may enter at reasonable times to inspect meters, and the undertakers may remove the meter and fittings when the supply is no longer required.

Undertakers are bound to supply gas to any public lamps within a distance of 50 yards from any of their mains in such quantities as the local authorities of the district may require, the price to be settled by agreement or, in case of difference, by arbitration. The supply is to be by meter at the option of either party.

Inspectors are appointed for testing gas and meters and for stamping meters, with authority to enter premises for these purposes.

Recovery of Rent

If any person supplied with gas neglects to pay, the undertakers may cut off the supply and recover the amount summarily as in the case of a penalty. Any amount due, with costs, may also be recovered by action in the ordinary way. The amount due for the supply of gas may be recovered on a summons before justices, or, in default of appearance, by distress warrant.

If any consumer leaves the premises without paying the gas rent or meter rent, the amount cannot be recovered from the next tenant unless he has undertaken with the former tenant to pay.

Where the supply of gas is discontinued the undertakers, after giving twenty-four hours' notice to the occupier, may enter betwen 9 and 4 o'clock in the day and remove any pipe, meter, fittings, or other of their property.

Waste and Misuse

Any person laying a pipe to connect with any pipe belonging to the undertakers without their consent, or fraudulently injuring any meter, or, where the gas is not supplied by meter, using any burner of larger dimensions than he has contracted to pay for, or in any other way improperly using the supply of gas, or supplying strangers, may be penalized to the extent of £5 for each offence and a daily penalty of 40s., and the undertakers may discontinue the supply. Wilfully removing, destroying, or damaging any pipe, pillar, post, plug, lamp, or other work of the undertakers, or wilfully extinguishing any public lamp or light, or wasting or improperly using any gas supply, is punishable by a fine of £5, in addition to making compensation for the damage done. If the damage is accidental, compensation must be paid to the undertakers, not exceeding £5, as may be awarded by two justices or the sheriff.

Nuisance from Gas

Penalties are imposed on undertakers for causing water to be corrupted by gas. Power is given to the person whose water is fouled to examine the gas pipes. Undertakers may be indicted for a nuisance. (See also Chapter XXIV of this Part.)

The undertakers must not manufacture gas except upon the land prescribed in the special Act or Provisional Order.

Quality of Gas

The quality of the gas supplied in respect of its illuminating power must be such as to produce at the testing place a light equal in intensity to that produced by the prescribed number of sperm candles at six in the pound, and the gas as to purity must not exhibit any trace of sulphuretted hydrogen when tested in accordance with the prescribed rules. The undertakers must provide a testing place with apparatus for these purposes.

The local authority or two justices may appoint gas examiners.

Profits and Accounts

The Acts provide that the profits of the undertakers shall not exceed a prescribed rate, or in any case 10 per cent, unless a larger dividend is necessary to make up any previous deficiency. Any excess is invested so as to form a reserve fund.

It is now provided that on any additional capital the profit shall be 7 per cent on the ordinary and 5 per cent on the preference shares, or for a sliding

scale of the price of gas and a dividend in the consumers' interest. The Standing Orders of Parliament also provide in the case of any new shares that they shall be offered by public auction or tender, the effect of which, where shares are sold at a premium, is to provide additional working capital without dividend and consequently a lowering of the price of gas.

Excess profits go to the formation of a reserve fund, which is not to be resorted to except to meet an extraordinary claim. When it amounts to the prescribed sum, the interest is applied for the purposes of the undertaking. If profits are less than the prescribed rate, a sum will be taken from the reserve fund to supply the deficiency. If profits are more than the amount prescribed, a rateable reduction is to be made in the price of gas.

Annual accounts must be made up by the undertakers and sent to the Clerks of the Peace in England or Ireland, or to the Sheriff Clerks in Scotland, and be open to inspection. Undertakers, other than a local authority, before the 25th March in each year, must forward to every local authority within their district an annual statement of accounts made up to the previous 31st December, and must keep copies of these annual statements at their office, supplying a copy to any applicant for 1s.

Provisional Orders and New Clauses

Provisional Orders are granted by the Board of Trade under the Gas and Water Facilities Acts, 1870 and 1873, public notice of the applications being duly given, and the Gasworks Clauses Acts being incorporated.

The new clauses which are inserted in private Acts and Provisional Orders relate to the proportionate payment of dividends, pressure of gas, purchase of lands by agreement, construction of mains and meters, interest on money deposited as security, and the power to supply gas fittings —the latter a contentious question. Power is usually given to supply but not to manufacture fittings. Other matters are. regulations as to notice by consumers before removing or to discontinue supply; contracts with local authority for supply in bulk; refusal of supply to consumers in debt for other premises; electric lighting powers; and many others, depending upon the local requirements.

Supply by Local Authorities

An urban authority, under the Public Health Act, 1875, and in Scotland and Ireland under the Acts applicable, may contract with any person for the supply of gas, or other means of lighting streets, markets, and public buildings in their district. They may provide lamps, lamp-posts, and other apparatus which may be necessary. Where there is not any other company or person authorized by Act or Provisional Order to supply gas for public and private purposes within any part of the district of a local authority, the local authority may themselves undertake the supply of gas throughout the whole or any part of their district. If the limits of supply of any authorized company or person include only part of the district, the urban authority may undertake the supply of the parts not included.

The urban authority must proceed by obtaining a Provisional Order under the Gas and Waterworks Facilities Acts, and then they have the powers of undertakers, subject, however, to the control of the Local Government Board instead of the Board of Trade. Local authorities may also proceed by special Acts, but not in cases where a Provisional Order would be sufficient.

An urban authority may, with the sanction of the Local Government Board, purchase by agreement with any statutory company the rights, powers, and privileges, and the works and property of such company, and become subject to all their liabilities.

London

The supply of gas in the metropolis is controlled by the Metropolis Gas Act, 1860, incorporating certain provisions of the Gasworks Clauses Act, 1847, and assigning districts to the various Metropolitan Gas Companies, and the various Acts of the Metropolitan Companies.

Special provisions apply as to complaints with regard to the quality and quantity and inspection by gas referees appointed by the Board of Trade, for the provision of pipes, and supply of gas and meters at prescribed rents and the terms of supply and settlement of differences, for penalties on the company for failure, for the public lighting of streets, and as to the power and purity of the gas, payment of examiners and facilities for examination, limitations and restrictions on the price of gas, form of accounts, protection of water companies, laying of pipes, and many other matters.

The sliding scale and the auction clause were first introduced and made applicable to Metropolitan Companies in 1875. Some of the Metropolitan Gas Companies have recently introduced schemes of profit sharing.

ELECTRICITY

Electric supply is a matter of much more modern interest than the supply of water and gas, and the legislature has had to proceed in accordance with the progress of invention. The Act of 1882, which is still the groundwork of the law on the subject, was passed at a time when it was believed that the principal use of electricity was for lighting purposes.

A Select Committee was appointed to consider the desirability of authorizing municipal corporations and other local authorities to adopt schemes for electric lighting, and also to consider whether it was advisable to authorize gas and other companies to supply light by electricity. Their Report, issued in 1879, was to the effect that it was most desirable to remove any restrictions and to facilitate the control and distribution of electric light by local authorities. Local Acts were passed, the first in Liverpool, for limited periods before the Act of 1882. Slow progress, however, was made in Great Britain with the practical use of electricity. The Act of 1882 gave local authorities the right of compulsory purchase after twenty-one years. A Select Committee was again appointed in 1886. The Electric Lighting Act of 1888 followed, and extended the period of acquisition to forty-two years. The Electric Lighting (Clauses) Act of 1899 provided general clauses for incorporation in Provisional Orders. Special Acts were passed applying to London and supplementing the powers of local authorities in respect of the delegation of duties and repayment of loans in Scotland. A Select Committee, presided over by Lord Cross, was appointed in 1898. The Electric Lighting Act, 1909, extended the purposes of Provisional Orders, although procedure by Private Bill is not superseded.

Electricity has been adopted very largely for traction purposes, and probably nearly £80,000,000 is invested in electric supply undertakings in the United Kingdom. Large local authorities have sought special powers by private Acts. It is to be noted that the powers conferred on them to supply electricity does not enable them as a rule to supply electrical fittings and appliances.

Provisional Orders

The Electric Lighting Acts apply to local authorities, companies, or private persons authorized by licences (which are now, however, obsolete), by Provisional Orders or by special Acts to supply electricity. The Board of Trade may, by Provisional Order, authorize any local authority, company, or person to supply electricity for any public or private purposes within any area for any such period as the Board may think proper. This Order must be confirmed by Parliament. The consent of a local authority is, as a general rule, required to a Provisional Order in favour of a person or company in their district.

The Board of Trade may, by Provisional Order under the Act of 1909, unless they are of opinion that by reason of the character or magnitude of the proposed undertaking the matter ought to be dealt with by Private Bill, authorize any local authority or company to supply electricity in bulk; provide for any supply so authorized being compulsory; and make such other provisions as appear to them necessary for adapting the Electric Lighting Acts to any case where a local authority or company is authorized to supply electricity in bulk, including the supply to roads, railways, and tramways along the routes of authorized lines. Power must generally not be given to break up roads outside the area of supply unless the local authority affected consents.

Any local authority, company, or person authorized to supply electricity in any area may, with the consent of the Board of Trade, supply electricity at any point within that area for the purpose of haulage or traction or lighting on railways, tramways, and canals partly within and partly without the area, and for incidental purposes connected therewith; but public notice must be given of the application for consent.

A Provisional Order may give authority for compulsory purchase of land for a generating station. A generating station must not be constructed on land acquired by agreement without the consent of the Board of Trade unless authorized by special Act or Provisional Order, and public notice must be given of the application for consent, so that local objections may be heard.

In certain cases, by the consent of the Board of Trade, premises outside the area of supply may be supplied.

Provisional Orders may be revoked on the undertakers' insolvency, or where the undertaking cannot be carried on at a profit, or where the works are not carried out, or by consent.

General Powers

The general scheme which is provided by the Electric Lighting (Clauses) Act, 1899, contains provisions as to the undertakers and the execution of works, and the audit of the accounts where

the undertakers are not the local authority, for the application of money and the purchase of land by local authorities undertaking electric supply, and the nature and mode of supply. The energy must be supplied by some system approved in writing by the Board of Trade and subject to Board of Trade regulations. The consent of the local authority is necessary for placing wires above-ground, and the laying of wires is also subject to the regulations of the Board of Trade and the Postmaster-General. General powers are given with regard to the execution of works, construction of street boxes, breaking up of streets, alterations of pipes and wires, and the laying of electric lines.

The Board of Trade may also confer powers on the undertakers for the breaking up of streets outside the area of supply where necessary to enable electricity to be brought into the area from a generating station of the undertakers situated outside. The consent of the local authority in question will generally be required.

Where a supply of electricity is provided in any part of an area for private purposes, any company or person in that part is entitled to be supplied.

Within two years of the commencement of the Special Order mains must be laid down in the streets specified in the Order and maintained thereafter, otherwise the Order may be revoked.

Supply of Electricity

Undertakers must furnish a sufficient supply of energy to owners or occupiers of premises within 50 yards from any distributing main within the area of supply. They must furnish and lay any electric lines that may be necessary, the cost of so much of any line as is laid upon private property, or that it may be necessary to lay for more than 60 feet from the distributing main, may have to be defrayed by the owner or occupier.

The owner or occupier must serve a notice upon the undertakers giving particulars of the supply required, and must enter into a written contract for two years, so that the charge shall not be less than 20 per cent on the outlay incurred in providing the electric lines.

The maximum power which any consumer may demand is not to exceed what may be reasonably anticipated as the maximum consumption on his premises, and a consumer who has required a given maximum must give one month's notice to the undertakers of any alteration.

A local authority may by reasonable notice require the supply to any public lamps within a distance of 75 yards from a distributing main.

A penalty of 40*s.* is imposed upon undertakers who are in default in supplying the owner or occupier of premises or the local authority when they are required by the special order to supply.

The undertakers may refuse to supply any person whose payments are in arrear in respect of any premises.

A person is not entitled to demand a supply from undertakers for any premises having a separate supply unless he has agreed with the undertakers to pay such minimum annual sum as will give them a reasonable return on the capital expenditure and cover other standing charges incurred in order to meet the possible maximum demand for those premises.

All electric lines, fittings, apparatus, and appliances let on hire by or belonging to the undertakers, though fixed to other premises, remain their property if they are distinguished by a metal plate.

Every consumer before he quits any premises supplied by the electrical energy must give the undertakers twenty-four hours' notice in writing, otherwise he will be liable to pay for the supply up to the next usual period for ascertaining the register of the meter, or to the time when any subsequent occupier requires the supply.

Charges

The undertakers must not give any undue preference to any person, but make charges as agreed upon. The undertakers may charge any ordinary consumer, subject to agreement, by the actual amount of energy supplied, or by the electrical quantity contained in the supply, or by any other method approved by the Board of Trade, and subject in the last case to any objections duly made by the consumer. The price is not to exceed that stated in the special Order or approved by the Board of Trade. The maximum charge is generally 8*d.* per Board of Trade unit, equal to 1000 watt hours. They may cut off the supply of any one who fails to pay, until payment with expenses is made. Unlawfully and maliciously cutting or injuring electric lines or works with intent to cut off any supply, and fraudulently appropriating electric current are punishable offences.

Where the local authority are not themselves the undertakers either the local authority or the undertakers, or such number of consumers not less than twenty as the Board of Trade considers sufficient, at any time after the expiration of five years after the commencement of the special Order, may make representation to the Board of Trade that the prices or methods of charge ought to be altered, and the Board of Trade after enquiry may

order a variation or substitution of other prices. Further alterations may take place at periods of five years.

The price to be charged to a local authority for public lamps is to be settled by agreement or by arbitration.

Inspection

Where the local authority are not themselves the undertakers, they, and where they are the Board of Trade, may appoint persons as electrical inspectors. The duties of inspectors are the inspection and testing periodically and in special cases of the lines and works and supply, and the certifying and examination of meters, and they have other duties according to the provisions of the special Order or regulations of the Board of Trade.

Reasonable notice must be given to the undertakers by the inspector, and a test is to be carried out at suitable hours at the works and mains.

Undertakers other than local authorities must establish testing stations, and keep properly tested instruments on their premises, and give facilities for testing.

The report of the test is to be made to the person requiring it and to the undertakers.

Meters

Meters are to be used in ordinary cases to test the amount of energy or the electrical quantity, except as otherwise agreed between the consumer and the undertakers. The meter must be certified under the provisions of the special Order, and fixed and connected with service lines in a manner approved by the Board of Trade.

An inspector, when required by the undertakers or any consumer, and on payment of a prescribed fee, will examine any meter used or intended to be used for ascertaining the value of the supply and certify it if correct, and also examine the manner in which any meter has been fixed and connected with service lines, and give a certificate if it is in a manner approved.

Neither the undertakers nor the consumer must connect or disconnect any meter without giving notice to the other of not less than forty-eight hours, under a penalty of 40*s*. A consumer must keep his meter in proper repair. Undertakers may let meters, and must keep those let for hire in repair. Differences between the consumer and the undertakers are to be settled by the inspector. The undertakers must keep a map of their area of supply, with full particulars marked thereon as to existing mains, service lines, and other underground works and street boxes, annually corrected, at their principal office, open to reasonable inspection.

Undertakings by Local Authority

Where any undertakers are authorized by any Provisional Order or special Act to supply electricity within any area, any local authority having jurisdiction within that area may, within six months after the expiration of a period of forty-two years, or a shorter specified period from the date of the passing of the Act confirming the Provisional Order or the special Act, and within six months after the expiration of every subsequent period of ten years or shorter specified period, by notice in writing require the undertakers to sell to the authority. The undertakers must then sell the undertaking, or as much of it as is within the jurisdiction of the local authority, upon terms of being paid the then value of all lands, buildings, works, materials, and plant suitable to and used by them for the purposes of the undertaking at the fair market value at the time of purchase, without any addition in respect of compulsory purchase, or consideration of goodwill, or profits which may or might have been made. In the absence of agreement the amount is to be settled by arbitration. The terms of purchase may be varied by the Board of Trade by Provisional Order.

Where any generating station, mains, or other works of a company used solely for supplying electricity within the district of a local authority are situated outside that district, they are considered for these purposes to be within the district of that authority, and when such station, mains, and works are used solely for supplying the districts of two or more local authorities, and are not situated within any of those districts, the Board of Trade may, on the application of all or any of these authorities, apply similar provisions. But, except by agreement, this provision does not apply to any generating station, main, or other works authorized by special Act passed before the 25th November, 1909. In the case of an undertaking authorized before 25th November, 1909, with the consent and approval of the Board of Trade, the local authority may transfer their rights of purchase to any other local authority having power to purchase part of the same undertaking within their district. It so happens that in many cases established undertakings have been acquired by local authorities, and in many other cases local authorities have transferred their Provisional Order to companies.

The Board of Trade, with the concurrence of the Local Government Board, may, by Provisional Order, constitute a joint committee or board for

the joint exercise of electric lighting powers by two or more local authorities.

Accounts and Profits

Undertakers are required to make up annual statements of account in the form prescribed by the Board of Trade. A copy of the statement must be deposited with the Board of Trade, and the public are also entitled to obtain copies at a charge of 1s.

Where the local authority are the undertakers they are required, after paying working and establishment expenses and interest, and providing instalments for the sinking fund, and any other expenses which cannot properly be charged to capital, to provide a reserve fund if they think fit by setting aside such money as they think reasonable. This accumulates at compound interest until the fund so formed amounts to one-tenth of the aggregate capital expenditure on the undertaking. The reserve fund is then applicable to answer any deficiency at any time happening in the income, or to meet any extraordinary claim or demand arising at any time.

The net surplus remaining in any year and the annual proceeds of the reserve fund when amounting to the prescribed limit are carried to the credit of the local rate, or, at their option, applied to the improvement of the district or reduction of capital moneys borrowed for electricity purposes. If the surplus in any year exceeds 5 per cent per annum on the aggregate capital expenditure, the undertakers must always make such a rateable reduction in the charge for the supply of electrical energy as in their judgment will reduce the surplus to the maximum rate of profit. Any deficiency in any year, when not answered out of the reserve fund, may be charged by the local authority upon a local rate.

Between the policy of reduction of rates and reduction of price to consumers a good deal of conflict sometimes takes place.

Power Supply

For the distribution of electric power several large companies have been formed since 1899, their object being to distribute electrical energy over wide areas, and they therefore sought special Acts of Parliament. In other cases power-distribution companies have sought Provisional Orders for special areas, and operate in various places. There can be no doubt that the tendency is towards distribution in bulk from large centres.

The supply of motive power for tramways and railways has become in recent years a most important aspect of electrical undertakings, and intercommunication between various districts by means of tramways has given rise to the constitution of joint tramway boards in many cases. Many electric-lighting undertakings have taken special powers to supply electricity in bulk.

The London Electric Supply Act 1908, conferred additional powers upon undertakings in the County of London owned by companies and borough councils, and contains provisions for linking up undertakings both municipal and otherwise. The London County Council is the general authority entitled to purchase the London undertakings within a certain time.

The great subject of electric traction, however, lies outside the scope of this work.

AUTHORITIES.—*Michael and Will*, "The Law of Gas and Water"; *C. M. Knowles*, "The Law Relating to Electricity".

CHAPTER XXII

NEGLIGENCE AND OTHER ACTIONABLE WRONGS

Negligence Generally—Deceit—Other Malicious Injuries

NEGLIGENCE GENERALLY

Negligence is a wide term, embracing not only those cases in which a person does a negligent act and thereby injures a stranger, but cases which we have had occasion to notice elsewhere in connection with contract where a person undertakes for the performance of a particular duty and carries it out with carelessness. Negligence therefore may arise out of a contract or apart from a contract altogether, or it may arise partially out of a contract; but however it arises, there must have been a duty to take care, which has not been discharged, from which neglect damage has resulted.

The subject might be indefinitely treated as covering a great variety of social relations; but the most common cases of negligence arise in connection with railways, tramways, and omnibuses. A passenger who is injured through the negligence of a railway company has an action arising out of contract, the company having agreed to carry him safely to his destination, he having paid his fare. It is the same when the journey is over more than one line and through tickets have been issued. The issuing company is liable for negligence on the other line as well as the carrying company. Wherever it can be shown that a company has invited or permitted a person to travel in their train, they are bound to take reasonable care. In the same way, a person who is a passenger by an omnibus and is injured through negligent driving has a right of action for negligence for breach of contract. But a person who is crossing the road may be injured by the same omnibus at the same time, and his right of action arises apart from contract.

Negligence also arises in connection with the carriage of goods, the custody of goods (especially dangerous goods and animals), the use of the highway, the occupation of premises, and, in personal and business undertakings to perform acts of skill or workmanship.

A well-accepted definition of negligence was given by Baron Alderson in *Blyth v. Birmingham Waterworks Company* (1856). "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do." Wherever there is a duty cast upon a person to take care, and any breach of that duty leads to the injury of another person, unless that person by taking ordinary care could have averted the injury, there is a wrong committed for which the first person is liable. It may even be, in some cases, the omission to do an act which constitutes the tort, but most torts arise from acts of commission. Still, where there is a duty to do an act, as in the case of a parent's duty to provide for a child or an employer's duty to protect men engaged upon dangerous work, a breach of this duty is clearly negligence, giving rise to a claim for damages when injury results. As to what degree of care should be exercised, we have already seen elsewhere that the care which is expected is that which an ordinarily reasonable and prudent man would take acting in his own affairs, and that a greater degree is expected from the person who asserts his professional or mechanical skill than from the ordinary person who

undertakes a duty. (See as to "Bailment", Chapter VI of this Part.)

Whenever, as was said in one case by Lord Esher, one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger—*Heaven v. Pender* (1883).

There are numerous cases which show that special care must be taken with dangerous goods or under dangerous conditions. For example, where a person entrusts a loaded gun to an inexperienced servant; or where a tradesman sells a tinned article, knowing that injury may result in opening it without special care and does not warn a buyer; or where injury is due to the use of a machine with a concealed element of danger; as there is a duty to warn independently of warranty, if there is neglect of that duty, such a person is liable for the injury caused by his negligence.

A jobmaster undertakes to let out carriages that are as fit as care and skill can render them for the purpose while being properly used, and if a breakdown occurs he must show that it was preventable by care or skill, or he will be responsible for the damage. But supposing a horse drawing a brougham were suddenly to bolt and cause injury to a foot passenger, there is no evidence of negligence for which the driver would be responsible. "For the convenience of mankind in carrying on the affairs of life, people as they go along roads must expect, or put up with, such mischief as reasonable care on the part of others cannot avoid," said Baron Bramwell in *Holmes v. Mather* (1875), a case of an accidental injury on the highway through a horse bolting. In the same way, if the works of a water company are constructed with reasonable care so as to sustain ordinary frosts, the company is not liable for damage caused by the bursting of pipes through extraordinarily severe weather—*Blyth v. Birmingham Waterworks Company* (1856).

The position of railway companies as carriers of goods and passengers affords many examples of actions for negligence, but the whole question of carriage is more conveniently treated elsewhere (see Part V).

Statutory Authorities

Railways working under statutory powers are not ordinarily liable for damages resulting from sparks when every precaution that the use of modern appliances can assist has been taken. In the same way they are not liable for damage or annoyance caused by vibration. Railways are authorized to run whether a nuisance is created or not. Where, however, damage results through the negligent exercise of their statutory powers, an action lies.

Tramway and electric lighting and other supply companies are liable for nuisances committed in the execution of their powers. (See Chapter XXIV of this Part.)

The duty imposed upon railway companies in respect of level crossings, however, is a duty to the general public, as is the duty of preventing *undue* sparks escaping from the engine. Breaches of these duties and many others are constantly costing railway companies heavy damages at the hands of juries. It is also the duty of railway companies to fence their lines, and if cattle stray on the line from adjoining fields and are injured, the company is responsible; but a railway company has not the duty imposed upon it of screening their line from an approach road to the station so as to prevent horses being alarmed by the ordinary noise of the trains—*Simkin v. London and North Western Railway* (1888).

Injuries on Premises

When injury is sustained by anyone on the private premises of another, the liability of the latter depends on the capacity in which the person injured was on the premises. If a person comes on to premises on lawful business, as where a workman attends to execute repairs, or a tradesman to deliver goods, or a customer goes to a shop, the owner is liable if the visitor sustains injuries through the defective condition of the premises or a dangerous element there, provided that the visitor himself used reasonable care. A customer at an inn can clearly claim damages for injuries from a falling ceiling.

If the stranger is a mere licensee, or a guest, he can only complain if he sustains injuries through dangers which are hidden from him and against which he ought to have been warned, as a trap door. A guest at a private house cannot recover for such injuries as those caused by a falling pane of glass.

Trespassers, however, have no such rights, except where there is something illegal, as an insufficiently fenced quarry within fifty yards of the public road, or where the owner has placed spring guns or man traps on his land. (See Chapter XXIV of this Part.)

While those who engage in works in which

there is an element of danger are bound to take precautions against accident, there is no duty as regards strangers who voluntarily go on premises where such operations are taking place. Where a contractor was engaged in excavating with a steam crane, and in consequence of a defect in the crane a casual onlooker was killed, there was no ground of action at the instance of his relatives. There was no contract between the defendant and the deceased. The defendant, said Lord Esher, did not undertake with the deceased that his servant should not be guilty of negligence. No duty was cast upon the defendant to take care that the deceased should not go to the dangerous place—*Batchelor v. Fortescue* (1883).

Where premises are let in flats or offices to various tenants, and the landlord retains control of and maintains the staircase and outside, there is a duty not only to the common tenants but to persons having business with them, and a liability in case of injury from defective condition. But where a tenant lights his own approach, there is no claim for injuries owing to insufficient lighting of the staircase.

A landlord is also liable for damage caused to the property of tenants through rainwater from a gutter under his control being stopped, if he has failed to have it cleared, probably whether his attention has been called to it by the tenants or not.

Acts of Servants

A person is responsible not merely for his own negligence, but also for the negligence of his servants who are acting within the scope of their employment. In the great majority of cases negligence arises through servants.

The liability of the employer or master for the negligent act is clear, although the act was in defiance of express instructions, so long as it is in the ordinary discharge of the servant's duties, as in the case of the racing of omnibuses—*Limpus v. London General Omnibus Company* (1862).

But it is otherwise where the act is unauthorized and outside the scope of the servant's duties, as where a railway servant wrongfully caused a passenger to be imprisoned—*Poulton v. London and South Western Railway Company* (1867). (See also Chapter II and Chapter X of this Part.)

Dangerous Animals

A person increases his responsibility for negligence very considerably by keeping dangerous animals. A person who keeps a dangerous animal, knowing it to be so, is not doing what a reasonable person would do, and is responsible for any damage which ensues, unless he can show that the escape of the animal was due either to a third party or to an unavoidable accident. Such animals are a nuisance. (See Chapter XXIV of this Part.)

Dangerous Accumulation on Land

The use of land by an owner, as is seen in Chapter XX of this Part, may result in damage to a neighbour and yet be unactionable, so long as the use is a natural one. Pumping operations may draw off the surrounding water supply. But where a person brings or accumulates on his land anything which, if it should escape, may cause damage to his neighbour, and it does escape and causes damage, he is responsible, however careful he may have been and whatever precautions he may have taken. This is the purport of the decision in the celebrated case of *Rylands v. Fletcher* (1868), when the House of Lords decided that damages must be paid which were due to the escape of water from an artificial water course.

Paraphrasing part of the approved judgment of Mr. Justice Blackburn (as he then was), it may be said that the person who for his own purposes brings on his lands, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and he is *prima facie* answerable for all the damage which is the natural consequence of the escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or perhaps that the escape was the consequence of *vis major* or the Act of God. The person whose grass or corn is eaten down by the escaping cattle of his neighbour, or whose mine is flooded by the water from his neighbour's reservoir, or whose cellar is invaded by the filth of his neighbour's privy, or whose habitation is made unhealthy by the fumes and noisome vapour of his neighbour's alkali works, is damnified without any fault of his own; and it seems but reasonable and just that the neighbour who has brought something on to his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on to his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should at his peril keep it there so that no mischief may accrue, or answer for the natural and anticipated consequences.

In a similar way a neighbour may recover damages for loss through a poisonous yew tree or a rusty iron fence projecting over the boundary

being nibbled by cattle, or the poisoning of wells by a collection of filth, all of which are really nuisances. (See Chapter XXIV of this Part.)

It was shown in a later case that damage caused by the Act of God or *vis major* was not actionable, e.g. where a thunderstorm caused the breaking of artificial embankments used to form ornamental pools—*Nichols v. Marsland* (1876)—or when it is due to the act of a stranger—*Box v. Jubb* (1879).

Fire

A person is responsible for fire caused by himself or his servants on his premises and spreading to others. (As to "Smoke", see Chapter XXIV of this Part.)

Contributory Negligence

It has already been hinted that although a person is responsible for his negligent act, liability may sometimes be escaped if it can be shown that the other person has contributed to the injury by his own negligence. If injury would not have happened had the plaintiff used ordinary care, he cannot recover damages for it. The distinction is sometimes rather fine. A person whose hand was crushed by the closing of a railway carriage door by the guard without giving warning as the person was entering the carriage was entitled to a verdict; but where another after entering the carriage left his hand on the carriage door for half a minute and was injured by the shutting of it by the guard (who had not given warning), it was held that there was contributory negligence so that he could not recover. There is no duty to warn passengers actually seated in the train.

In ordinary "running down" cases, which are the commonest form of action in the Courts, contributory negligence is set up in defence almost as a matter of course, and in the case of collisions between two vehicles it is often very difficult to tell which was in the wrong, if either. The decision generally turns upon the pace at which the vehicles were respectively proceeding, whether they were keeping to their own sides of the road, and whether the drivers were giving their undivided attention.

A plaintiff may, however, be guilty of some want of care and yet not disqualify himself from recovering in the action. In *Tuff v. Warman* (1857) Mr. Justice Willes said if both parties were equally to blame and the accident the result of their joint negligence, the plaintiff could not be entitled to recover; if the negligence and default of the plaintiff was in any degree the proximate cause of the damage, he could not recover, however great might have been the negligence of the defendant; but if the negligence of the plaintiff was only remotely connected with the accident, then the question was whether the defendant might not by the exercise of ordinary care have avoided it. This statement of the law was approved on appeal, and has been cited as authoritative ever since. If a plaintiff could by the exercise of such care and skill as he was bound to exercise, have avoided the consequence of the defendant's negligence, he could not recover—*Radley v. London and North Western Railway Company* (1876), a case which is generally cited as well illustrating these limits. Though a plaintiff may have been guilty of negligence, and though that negligence may in fact have contributed to the accident which is the subject of the action, yet if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him.

Two older cases clearly show to what extent a person accepts the consequences of another's negligence through his own want of reasonable care. In *Butterfield v. Forrester* (1809) a person who was engaged in repairing his house placed an unjustifiable obstruction across the road. Another person came galloping along the road in a reckless manner and collided with the obstruction. He was held not entitled to recover damages. In the other case, *Davies v. Mann* (1842), the owner of a donkey had fettered its fore feet and left it in a helpless condition in the roadway. The driver of a heavy wagon proceeding at an undue rate drove over the donkey and killed it. The owner was entitled to recover damages on the ground that the driver of the wagon had not been decently careful. The latter was bound to go along the road at such a pace as would be likely to prevent mischief; if he had done so he would have avoided the obstruction.

If the original negligence was an effective cause of the damage (which is a question of fact in each case), the person guilty of it by himself or his servants is liable. Two other cases are often cited to illustrate what is meant by negligence being the proximate cause of the damage. In *Sharp v. Powell* (1872) a person had washed a van on the highway. In consequence of frost, ice formed across the highway, and the plaintiff suffered injuries through his horse slipping on it. It was held that the defendant could not have foreseen that the water would freeze instead of running down the drains, and that the injuries were not a consequence of his act for which he was liable. In *Harris v. Mobbs* (1878) a van and ploughing machine had been left by the side of the road, and a horse shied at them and ran away and kicked its rider to death. Here it was held that, although

the kicking was the cause of death, the unauthorized and dangerous appearance of the van and plough by the roadside was the proximate cause of the disaster. Where a servant in charge of a cart negligently left it with a boy, who drove it and had a collision, the owner was liable. Where a person had taken a horse into agistment, and his servant left a gate open and the horse strayed into an adjoining cricket field, and in being driven back by the players was injured against a wire fence, the agister was liable, as the gate being left open was the original cause of the damage. But there was no ground of action against a railway company where a van was left on their premises in a safe place, and some boys broke in and maliciously started it down a decline, where it caused damage.

Infants

Difficulty arises in the case where injury happens to an infant. If the infant is in charge of a grown-up person and that person is negligent, such negligence will be imputed to the infant, and damages cannot be recovered in respect of the child's injury; but where the child is alone and injury results from want of care in a third party, the negligence of the infant will not excuse liability. *Harrold v. Whitney* (1898) was a case where a rotten fence adjoined a highway, and a boy in an attempt to climb it was injured. The owner was held liable: the defective fence was a nuisance and the cause of the injury.

An infant is expected to take the care which a child of its age would ordinarily take, and not more. Where a railway company kept an unlocked turntable on land close to a public road, knowing that children trespassed and obtained access through a well-worn gap in the hedge, the company were held liable for the injuries sustained by a child through playing on the turntable—*Cooke v. Midland Great Western Railway of Ireland* (1909). But where there is no duty towards the plaintiff and no act or omission on the part of the defendant, the position is otherwise—*Schofield v. Bolton Corporation* (1909.)

Identification

It was at one time supposed that a person who had engaged another to drive him in his carriage could not sue a third party for negligence if his own driver was guilty of contributory negligence. He was supposed to be identified with his driver and debarred from a right to sue. This theory was overruled in the case of *Mills v. Armstrong* (1888), an admiralty case, where a collision had occurred between two steamships, the masters of both being in fault. The representatives of a passenger of one steamer who was drowned were held entitled to recover against the owners of the other.

Proof of Negligence

In ordinary cases the onus of proving negligence is on the person who sues for damages, and the onus of proving contributory negligence in such person is on the person sued; but there are certain cases in which proof of negligence is not required, where the facts speak for themselves, as where a barrel of flour falls out from an open window of a miller's shop on the head of a passer-by, or where a brick falls out from a railway bridge. Negligence will not, however, be assumed when the facts are capable of two explanations. Where a man is found killed on the line, it may be that he was run over by the train, or that he ran against the train—*Wakelin v. London and South Western Railway Company* (1886).

In any action for personal injury resulting from alleged negligence, it is for the judge to say whether facts have been established from which negligence may be reasonably inferred. If circumstances show that negligence cannot be reasonably inferred, it is his duty to withdraw the case from the jury; but where there is reasonable evidence of negligence, it is for the jury to say whether negligence ought to be inferred from such facts.

Claims in Case of Death

At one time there was no right of action if a person was killed; but under the Fatal Accidents Act, 1846, an action may be brought for the benefit of the widow, husband, parents (grandparents or step-parents), or child (grandchild or step-child) of the deceased by the executor or administrator of the person whose death is caused by a wrongful act, neglect, or default of another.

Only one action can be brought for the same cause of complaint, and the action must be commenced within one year after the death. If an executor or administrator does not bring any action within six months, an action may be brought in the name or names of all or any of the persons who are entitled to benefit. The jury may apportion the damages among the dependents.

It must be proved that the person for whose benefit the action is brought suffered a pecuniary loss from the death, i.e. some substantial detriment, which may be the loss of a voluntary grant but not a loss confined to grief or due merely to funeral expenses.

Actions

Actions must be brought within six years under ordinary circumstances.

Local Authorities

The liability of local authorities for misfeasance is noted in Chapter XXIV of this Part. Any action against a local authority must, under the Public Authorities Protection Act, 1893, be commenced within six months after the act or default complained of, except in certain cases under statutes relating only to Scotland.

Under the Riot (Damages) Act, 1886, persons whose building or property is injured in a riot may claim compensation from the local authority.

DECEIT

A subject not far removed from negligence may be briefly treated in this chapter. Unlike negligence, however, the cause of action must always arise from some clear act of commission, in which there must be the element of fraud. Deceit is where one person is fraudulently led by another to believe something, and acting upon it he sustains damage through its falseness.

In an action for deceit fraud must be proved, and this class of action must therefore be distinguished from an action brought for the rescission of a contract on the ground of misrepresentation, where the misrepresentation is alone sufficient to upset the contract (see Chapter I of this Part), and from that class of action in which a person with a duty to give information, as a trustee or an agent, is bound to make his assurance good. In the circumstances which give rise to the common law action of deceit there is no such duty, and misrepresentation alone is insufficient. The leading case of *Derry v. Peek* (1889) decided that company directors were not liable for untrue statements honestly made in the belief that they were true. Although the Directors Liability Act, 1890, was speedily passed to alter the law in that particular application, as a general proposition the decision (not without criticism) remains. In that case Lord Herschell reviewed all the older cases, showing that without proof of fraud no action for deceit was maintainable. He said: "First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation is made (1) knowingly, or (2) without belief in its truth, or (3) recklessly — careless whether it is true or false. . . . In my opinion, making a false statement through want of care falls far short of, and is a very different thing from, fraud, and the same may be said of a false representation honestly believed, though on insufficient grounds . . . When a false statement has been made, the questions whether there were reasonable grounds for believing it, and what were the means of knowledge in the possession of the person making it, are most weighty matters for consideration. The ground upon which an alleged belief was founded is a most important test of its reality. I can conceive many cases where the fact that an alleged belief was destitute of all reasonable foundation would suffice of itself to convince the Court that it was not really entertained, and that the representation was a fraudulent one."

When there is fraud, it is no defence that the defendant had no interest in the false statement, and made it out of kindness to the person to be benefited. But where the misrepresentation is a representation or assurance as to the "character, conduct, credit, ability, trade, or dealings of any other person" to the intent and purpose that such person may obtain credit, money, or goods upon it, it must be in writing and signed by the person making it in order to be actionable. (See Chapter VIII of this Part.)

The representation need not be directly made to the person acting and relying upon it, as in the case of a company prospectus, if a statement containing a misrepresentation is meant also to induce the public to buy shares on the market and not only to apply direct for shares—*Andrews v. Mashford* (1896).

Le Lievre v. Gould (1893) was a case in which a surveyor gave untrue certificates, upon which builders secured advances from the mortgagees; but the surveyor owed no duty to the mortgagees to exercise care, and he was not guilty of fraud. The mortgagees were therefore not entitled to recover against him for the result of his negligence.

"The question", said Lord Esher, "of liability for negligence cannot arise at all until it is established that the man who had been negligent owed some duty to the person who seeks to make him liable for his negligence. . . . Negligence, however great, does not of itself constitute fraud."

It is otherwise, it must be repeated, where there is any contractual relationship; and in the waterfinder's case—*Pritty v. Child* (1902)—the employer

was held to be entitled to recover the cost of boring for water on an assertion recklessly made by the defendant.

In the case where a railway time-table advertises a train which does not run, and an intending passenger sustains loss, he can recover on grounds of deceit. When a person makes a certain statement, knowing it to be untrue, to another, who is induced to act upon it, an action lies. And it is so whether the statement is made by word of mouth to an individual or published at large to the community—*Denton v. Great Western Railway* (1856).

Misrepresentation by agents is noticed elsewhere (Chapter II of this Part). But here it may be recalled that in *Pearson v. Dublin Corporation* (1907) Lord Halsbury said: "It matters not in respect of principal and agent (who represent but one person) which of them possesses the guilty knowledge or which of them makes the incriminating statement. If between them the misrepresentation is made so as to induce the wrong, and thereby damages are caused, it matters not which is the person who makes the representation or which is the person who has the guilty knowledge."

OTHER MALICIOUS INJURIES

To set the criminal law in motion against any individual maliciously is actionable; and the plaintiff who proves that he was innocent, that his innocence was pronounced by the tribunal before whom he was tried on the charge, and that there was a want of reasonable and probable cause for the prosecution, will often recover heavy damages. But it is not an actionable wrong even maliciously to take civil proceedings against a person, unless these proceedings are of a class which closely resemble a criminal charge, as a petition in bankruptcy or proceedings in winding-up against a company. Such proceedings, when unreasonable and malicious, justify a claim for damages sustained through them.

Methods of Competition

There are also certain acts lying on the borderland between wrongs and legitimate competition in connection with business which may be briefly noticed here. It has sometimes been attempted to restrict what was felt to be unfair competition on the ground that it was an actionable wrong to the plaintiff, but such actions have not been successful unless there has been fraud or misrepresentation. To undersell another trader, to filch away another man's business by new and alarming methods of competition, is not actionable unless there is some clear misrepresentation. It is not actionable to advertise a manufacturer's goods for sale at a loss, even though such a course would be clearly injurious to the manufacturer's relations with other retailers. Apart from any question of misrepresentation, a person might continue such a damaging advertisement even when he had no goods and the manufacturer refused to supply him, as he might be able to acquire them from other dealers—*Ajello v. Worsley* (1898).

In a very celebrated case it was sought to show that a firm of shipowners were liable in damages to rivals because they formed an association and offered rebates to those dealing exclusively with them (a subject which has been glanced at elsewhere; Part I, Chapter X)—*The Mogul Steamship Company v. McGregor* (1889).

It was held by the House of Lords that the association was formed by the defendants with a view to keeping the trade in their own hands, and not with the intention of ruining the trade of the plaintiffs. Such competition was therefore not unlawful, and there was no cause of action. Lord Justice Bowen (as he then was) in the Court of Appeal said: "No man, whether trader or not, can, however, justify damaging another in his commercial business by fraud or misrepresentation. Intimidation, obstruction, and molestation are forbidden; so is the intentional procurement of a violation of individual rights, contractual or other, assuming always that there is no just cause for it." The intentional driving away of customers by show of violence; the obstruction of actors on the stage by preconcerted hissing; the impeding or threatening servants or workmen; the inducing persons under personal contracts to break their contracts; he gave as instances of forbidden acts. But the Lord Justice distinguished them from the acts of the defendants; and to hold their acts illegal would be "to convert into an illegal motive the instinct of self-advancement and self-protection, which is the very incentive to all trade. To say that a man is to trade freely, but that he is to stop short at any act which is calculated to harm other tradesmen, and which is designed to attract business to his own shop, would be a strange and impossible counsel of perfection. . . . All commercial men with capital are acquainted with the ordinary expedient of sowing one year a crop of

apparently unfruitful prices, in order by driving competition away to reap a fuller harvest of profit in the future. . . ." To attempt to limit English competition in the way suggested, he said, would probably be as hopeless an endeavour as the experiment of King Canute.

Many expedients are in common use for the maintenance of manufacturers' prices. Sometimes this is obtained by combination, through associations, as in the case of proprietary articles, and at other times by control of the press and limitation upon advertising. It has been sought at times to show that this is an actionable wrong to the retailer in restricting his liberty of sale.

Conspiracy

In the *Mogul* case the ground unsuccessfully relied upon was what was called "commercial conspiracy"; but as far as conspiracy is really a ground of action affecting business relations, the question generally shades off into the association of master and workman and the interference of outsiders. No lawful act becomes actionable merely because it is done with malice, although a combination of two or more people without justification or excuse to injure a man in his trade may be actionable where the act of an individual would not be so. Where, in this way, a combination induces a man's customers or servants to break their contracts with him, or not deal with him or continue in his employment, and damages result in consequence, there is an actionable wrong. The Trades Disputes Act, 1906, however, protects the officials of a trade union against actions of this kind. (See Chapter X of this Part.)

CHAPTER XXIII

MOTOR CARRIAGE

Motor Cars—Heavy Motor Cars—Locomotives—Insurance of Motor Cars—The Motor Industry

The motor-car trade, of modern origin, is so continuous in its growth that new legislation or regulation has been necessary, and will no doubt again become necessary, from time to time, dealing with the construction and use of cars.

Consideration must be given to the subject as divided between the ordinary light car which is used for the conveyance of passengers, the heavy vehicle which is used for the quick conveyance of goods, and the locomotive proper which is something heavier still and in its use of the road must conform to special conditions. These three classes must be treated separately. The ordinary passenger car has become an essential element in business life as an important adjunct to the business and professional man.

The term "motor car" has been common only since the Motor Car Act, 1903. The expression "light locomotive" had previously been the recognized term, as all such vehicles were governed by the Locomotives on Highways Act, 1896. "Light locomotive", however, includes a trailer. On the Continent and in America the terms automobile, autocar, and auto are more common.

MOTOR CARS

The Motor Car Act, 1903, applies to the United Kingdom. The Orders made under it are by the Local Government Board in England and Wales, and by the Secretary of State for Scotland and the Local Government Board for Ireland, but the rules and regulations are similar throughout the kingdom.

The Act amended the law in several particulars with regard to the use of the highways by such vehicles, and laid down new rules which had become necessary in consequence of the general introduction of such traffic upon highways. The Act set up a system of registration with a view to the easy identification of cars and their owners, required drivers of vehicles to possess licences, provided penalties in cases where persons drove cars without holding licences duly in force, repealed the maximum speed limit of 14 miles an hour and substituted the limit of 20 miles, but at the same time aimed at advancing and strengthening the provisions of the law which sought to prevent reckless or negligent driving.

The special speed limit of 10 miles may be prescribed by the Central Authority on the application of a local authority after public enquiry; and in certain unsuitable or dangerous places, or where there is not a width of more than 16 ft., motor traffic may be prohibited altogether. Local Authorities must also put up signposts denoting dangerous corners, crossroads, and precipitous places; but a great deal of this work has been done all over the country by motor societies.

The leading British associations are the Royal Automobile Club, and the Automobile Association and Motor Union. These have been "recognized" by the Local Government Board as associations for the grant of certificates in connection with international cars. Membership confers certain advantages. Patrols and road agents are maintained, legal advice is given and defences undertaken; while attention is given to proposed new regulations, insurance, commercial vehicles, and other general and special matters of interest to the users of cars.

General regulations apply equally to motor cycles.

Construction and Weight of Motor Cars

The weight of an ordinary car is limited to 2 tons unladen; one trailer may be drawn, and the combined weight must not exceed 4 tons unladen. The weight of a car does not include the weight of any water, fuel, or accumulators used for the purpose of propulsion.

The emission of smoke and vapour, except when accidental, must be guarded against by construction. If constructed otherwise a motor car is subject to the conditions controlling locomotives on highways.

The Motor Car (Use and Construction) Order, 1904, governs the general construction and use of cars on the road.

Every car which exceeds in unladen weight 5 cwt. must be capable of being worked forwards or backwards. The maximum width of a car is 7 ft. 2 in. between the extreme projecting points. The tyre of each wheel must be smooth and of certain width where not pneumatic or of soft or elastic material, and in the case of cars exceeding 15 cwt. without such tyres, the unladen weight must be painted on the car. Each car must have two effective brakes. Any vehicle drawn exceeding 2 cwt. must have an effective brake and carry a passenger capable of applying it, unless its brake is simultaneously applied with either of the motor-car brakes.

Every car must be so constructed as to enable the driver when the car is stationary to stop the action of the machinery so as to prevent undue noise.

Every motor car must carry a bell or horn to be duly sounded on approach. It may be observed that this is to give notice to particular individuals and not generally to clear the road. Continuous sounding may be a nuisance. (See Chapter XXIV of this Part.)

Lighting

Every car must carry a light during the time between one hour after sunset and one hour before sunrise, on the extreme off side, showing a white light in front and, unless there is a rear light to the car, a red light in the reverse direction. Search lights are prohibited. The identification marks must also be illuminated. It is sufficient for a motor cycle to have a lamp exhibiting a light in the direction in which it is proceeding. Local by-laws may prescribe special conditions.

Duties on Motor Cars

Owners of motor cars have to take into consideration several classes of duties. The duties on the car itself, the registration duty, and the licence duty for the driver, are the most important, while there is the male servant duty of 15*s.* in the case of a servant employed to drive. No duty is paid on a car which is used in the way of trade and inscribed with the owner's name and address. Medical men are entitled to a rebate of half the duty on a car for professional use.

The duty on the car varies from two guineas for a car not exceeding 6½ horse-power to £42 for 60 horse-power and upwards.

Hackney motors, which are subject to the regulations made with regard to cabs, pay a duty according to weight. Motor cycles pay £1 for whatever horse power.

If any crest or design is used on a motor car the duty of £2, 10*s.* for armorial bearings must also be paid.

There is a duty on motor spirit used for driving a motor car, with a rebate of one-half when used for trade cars or hackney carriages, or by medical men.

There are exemptions from the respective duties where a driver is employed on His Majesty's service or for other official purposes, or where one is licensed to keep public stage carriages or hackney carriages for hire; and there are similar exemptions in the case of armorial bearings. (See generally as to Duties, Chapter XXVIII of this Part.)

Registration

The registration of all motor cars must be effected with the council of a county or county borough—not necessarily where the car is owned—the council assigning a separate number to every car registered with them, to be used with the letter mark which is assigned by the Central Authority to every registering authority. Each registering authority is required to establish and keep a Register of Motor Cars registered with them. Applications must be made for registration on a prescribed form, with particulars as to name, residence, description and weight of the car, use, and proposed situation of identification marks. The fee is 20*s.* for a motor car and 5*s.* for a motor cycle, and for a change of ownership 5*s.* and 1*s.*

The letter and number must be indicated by two plates, which every motor car must carry. Two forms of rectangular plate are permissible, either with the letter over the number or the letter side by side with the number. The ground of the plate must be black, and the letters and figures, 3½ in.

high and $\frac{5}{8}$ in. broad, must be in white. The plates must be fixed one on the front and one on the back of the car in an approved upright position so that the inscription may be easily distinguishable. At night the back plate on every motor car must be illuminated. Motor cycles are not required to carry the same-shaped plate, but the plate at the front may have duplicate facings.

Manufacturers and Dealers

The registering authority may, for an annual fee not exceeding £3, assign to any manufacturer or dealer whose business is carried on within their district a general identification mark for use on unregistered cars run for trial purposes. The two plates are red with white lettering, or some other distinctive colouring. The manufacturer or dealer is required to keep a record of the number, and the name and address of any person driving the car.

The Register of Motor Cars is not open to public inspection, but to the inspection of Inland Revenue officers, and copies must be supplied on application by any other registering authority, and by any police authority or duly authorized constable in the case of any specified motor car or manufacturer or dealer. Any other person, on showing a reasonable cause, can obtain a copy of the entry relating to a special car for one shilling.

The registration must be amended in case of change in the car, and may be cancelled when the car is destroyed or registered elsewhere. Penalties are provided for non-registration.

Registration of motor cabs and omnibuses must also be effected in accordance with regulations in London and in any urban district where regulations are in force.

Licensing of Drivers

While the car is the subject of registration and licence, the driver must also be licensed when a car is driven upon a public highway, whether he be the owner of the car or a servant. An unlicensed driver and the owner are both guilty of an offence.

The licensing authority is the same as the registering authority in the district in which the applicant resides. Foreigners without a permanent residence may obtain a licence through a recognized association (see p. 75). Any person over seventeen years of age (fourteen for a motor cycle), unless disqualified, can obtain a licence on payment of 5*s*. A person is disqualified for obtaining a licence who already holds another licence, or whose licence has been suspended, or who has been declared by a Court disqualified by reason of the commission of an offence. The licence remains in force for twelve months from the time of taking it out, and is then renewable on the same terms. The licence must be shown by any person driving a car on the demand of a police constable, failure to produce being an offence, but it need not be handed over.

When a person is convicted of an offence under the Act or in connection with the driving of a car other than the first or second offence consisting solely of exceeding any speed limit, the Court may, subject to appeal, suspend any licence, and also declare the person disqualified for obtaining a licence for a given time, or declare a person who has not a licence disqualified for obtaining one for a certain time, and cause particulars of the conviction to be endorsed upon any licence held by the person. A copy of these particulars is to be sent to the registering authority.

It is an offence to refuse to produce the licence for the purpose of endorsement. It is an offence for a person disqualified to apply for or obtain a licence, which licence, if granted, is made of no effect; but a person may appeal against the conviction. It is an offence if any person forges or fraudulently alters or uses, lends or allows to be used by any other person any mark for identifying a car or any licence. But if a licence is lost or defaced, the issuing authority, on being notified, may grant a duplicate on payment of one shilling.

The drivers of motor cabs, and the drivers and conductors of motor buses, as well as the proprietors, must be licensed by the Commissioner of Police in London and in accordance with any by-laws in force elsewhere.

Driving

Motorists are subject to the ordinary law as to the use of the highway as well as to the special law provided by the Locomotives on Highways Act, 1896, and the Motor Car Act, 1903. (See also Chapter XXII of this Part.)

Any person who drives a motor car on a public highway—that is, any roadway to which the public are granted access—recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the highway, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be, on the highway, is guilty of an offence. A police constable may apprehend without warrant the driver of any car offending within his view if he refuses to give his name and address or produce his licence on demand, or if the car does not bear an identification mark. A driver who so

refuses his name and address, or gives a false name or address, is guilty of an offence; and it is the duty of the owner, if required, to give any information which may lead to the identification and apprehension of the driver, and if the owner fails so to do he is guilty of an offence.

A person driving a motor car must, where any accident occurs owing to the presence of the car on the road, stop and, if required, give his own name and address and that of the owner, and the registration mark or number of the car. A person knowingly contravening this requirement is liable to heavy penalties.

No person under any circumstances must drive a motor car on a public highway at a speed exceeding 20 miles an hour, and in the same way must conform to any special 10-mile limit prescribed in any area, under penalties. To secure conviction there must, however, be more than one witness to the rate of speed. The driver must be warned of the intended prosecution at the time the offence is committed, or notice must be sent to him or to the owner of the car within 21 days before the prosecution.

Special regulations apply to the use of cars in the Royal Parks and over Menai Bridge.

A motor car must not be driven backwards for a greater distance or time than may be requisite for safety or convenience. The driver must be in a position of control with a full view of the road and traffic ahead, and must not quit the car without taking proper precautions against its being started. He must keep to the left when meeting and to the right when passing on the road, and must not negligently or wilfully prevent, hinder, or interrupt the free passage of any person, horse, or cattle on the highway. On the request of any constable or person in charge of a horse, a driver of a motor car must, on receiving the required signal, stop, and remain stationary so long as is reasonably necessary.

Penalties and Legal Proceedings

Special penalties are provided for some offences in connection with the use of cars which we have already noticed.

Persons guilty of offences under the Act for which no special penalties are provided, are liable on summary conviction to a fine of £20, or in the case of a second or subsequent conviction to a fine of £50, or in the discretion of the Court to imprisonment for three months.

A person convicted and sentenced to a fine of more than 20s. (excluding costs) or imprisonment may appeal to the next Quarter Sessions.

Storage of Petroleum

The regulations governing the storage of petroleum are laid down by an Order of 1907 by the Secretary of State. Two methods are provided under which alone petroleum may be stored. The first is in accordance with regulations specially made, and the second by licence of the local authority given after inspection of the proposed place of storage by the local authority officer.

In accordance with the regulations, not more than 60 gallons must be kept in one storehouse at a time, and storehouses must be isolated and marked with indications of danger. A licence of the local authority is necessary if over 60 gallons is stored. Where a licence is not obtained or petroleum is not stored in accordance with the regulations, there is a penalty of £20 a day for each offence.

International Use of Motor Cars

In accordance with an Act of 1909 an Order in Council has provided that the Local Government Board shall be the authority certifying as to cars going abroad and foreign cars arriving in the United Kingdom for which registration is provided under international convention with any other country. The Motor Car Act is modified in such cases in regard to the production of a licence and the use of the plate, the international travelling pass and the international plate being accepted; like conditions prevailing, by convention, in the case of British cars going abroad.

HEAVY MOTOR CARS

Heavy motor cars are subject to the regulations made by the Heavy Motor Car Order, 1904, and Amendment Order, 1907, under the Acts of 1896 and 1903. The object of the regulations was to facilitate the development of motor traffic of a heavier character than had hitherto been allowed by law, and to secure the observation of suitable conditions for the protection of the roads against damage and the avoidance of inconvenience to other users of the highway.

It is hardly possible that these two objects should be reconciled to the satisfaction of everyone, but it has come to be pretty generally appreciated that the commercial use of motor vehicles in the joint interests of trade and public convenience must be not only tolerated but

encouraged. That they have revolutionized the traffic on the roads and seriously affected the quiet user of our public highways as well as the value and enjoyment of adjoining properties is undeniable, but every form of progress must bring with it disadvantages to someone.

The regulations were passed upon the report of the Committee and after suggestions and criticisms made by interested outside bodies. The limit of weight was raised to 5 tons, and the joint weight unladen of a car and trailer to 6½ tons. The joint weight of the car and its load was also taken into consideration. The total weight of car and load is limited to 12 tons, and the weight borne on any axle is not to exceed 8 tons. The weight on any axle at any time is not to be allowed to go beyond the weight accepted as for that axle at the time of the registration of the car.

Regulations were also made as to the character and dimensions of tyres and the construction of wheels and springs. The rate of speed is generally 8 miles an hour, or 5 miles if the car exceeds in weight 3 tons unladen, or has any axle with an axle weight exceeding 6 tons, or draws a trailer; but a speed of 12 miles is allowed to cars with pneumatic tyres where none of the axles exceeds 6 tons.

Regulations were also made with regard to trailers and the width of their tyres, and the method of drawing.

On applying for registration of heavy motor cars, particulars must be declared as to the weight unladen, the "axle weight" of each axle, the diameter of each wheel, the car being personally inspected by the registering authority. Particulars are entered in a special part of the Register of Motor Cars. Particulars of weight must be painted on the car. Other provisions enable the officer of any local highway or registering authority to test the weight of any actual load; stipulate for notices to be placed on bridges prohibiting the passage of any car with a registered axle weight exceeding 3 tons on any axle, or with a higher specified axle weight, except with the consent of the person liable to repair the bridge, arbitration being provided in case of dispute, and also prohibit the use of the bridge at the same time by two cars or locomotives of a certain weight. The diameter of a wheel not fitted with soft or pneumatic tyres must not be less than 2 ft. The width of heavy cars must not exceed 7 ft. 6 in. There must be suitable springs between each axle and the frame.

LOCOMOTIVES

A heavy motor car which is not in accordance with the Order is treated as a locomotive, and is governed by the Locomotive Acts.

A locomotive is a mechanically propelled vehicle which weighs over 5 tons unladen, or with unladen trailer over 6½ tons. The limit of width is 9 ft., and of weight 14 tons, unless specially authorized by a local authority within its own area.

Elaborate provisions as to weight of locomotives are contained in the Act of 1878, sec. 28. Increased width of tyre is required with the increased tonnage. A locomotive not drawing a wagon, and not exceeding 3 tons, must have tyres of 3 in. in width, and an additional inch is required for each ton above 3 tons.

The speed must not exceed 4 miles or 2 miles through any town or village, and local authorities may prescribe a slower speed.

Where a locomotive draws a wagon the tyres of the driving wheels must be 2 in. wide for every ton of the locomotive's weight, unless the diameter of the wheel exceeds 5 ft., in which case the width of the tyre may be reduced. The unladen weight of all wagons must be marked on them, and without the consent of the local authority no locomotive may draw more than three wagons.

Two persons must be in attendance on the locomotive, and a third to attend carriages or horses, and if there are more than three wagons a fourth. Someone must always be in attendance on the motor so long as there is a light in the firebox.

Two lamps must be carried—one on each side of the front of the locomotive. They must be lighted at the usual times, except between October 1 and April 1, when they must be lighted from sunset to sunrise, and a red light shown at the rear, or at the rear of the last wagon.

Licences

Locomotives must be licensed by the local authority, except where they are used solely for thrashing, or ploughing, or any other agricultural purpose and not let out for hire, or not for haulage, or by a road authority in their own district. The licence fee varies with the weight of the engine without water or fuel—10 tons and under at £10, and for every additional ton or fraction of a ton £2.

The engine itself is licensed, and all locomotives must be registered, and must bear a plate with the date and number and name of the registering

authority. The plate may be transferred under authority from one engine to another during the currency of the licence.

The licensing authority is the County Council of the county in which the engine is ordinarily used. The authority may restrict the use on certain specified highways, and also recover damages for extraordinary traffic or excessive weight on highways. If used in another county, application must be made to the County Council of that county for a licence, which is issued at half the rate of the first licence; or a *prepayment* may be made of 2*s.* 6*d.* per day while the engine is used in the county.

Motors used for agricultural and haulage purposes and by road authorities must be registered in the county at a fee of 2*s.* 6*d.* and have a plate affixed, although they do not require a licence. Local regulations as to the use of locomotives may also be made.

Damage to the Roads

Under the Highways and Locomotives Acts, 1870 and 1898, the local highway authority in England and Wales may recover damages where on the certificate of their surveyor it appears that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expense has been incurred by reason of damage caused by excessive weight passing along, or extraordinary traffic using the road. Damages may be recovered from the person by or in consequence of whose order the road was so used.

If the claim does not exceed £250 the action must be brought in the local County Court, otherwise in the High Court, within twelve months of the damage; or, if it is in consequence of any particular contract, within six months of the completion of the contract.

What is excessive traffic is always a question of fact. Although the normal traffic in any particular district may be proved to be very heavy, this may be no defence against a claim for damage, as it is open to the Court to find that the use of a particular road was extraordinary, even in that district, and to order that payment must be made accordingly.

INSURANCE OF MOTOR CARS

The subject of insurance of motor cars is one of extreme importance, as the owner of a car not only runs a considerable risk of loss of his own property, but is also in danger of being made answerable for injuries sustained by others in consequence of the use of his car. Nearly all insurance companies deal with this class of insurance, and there are other companies established for the express purpose of dealing with it. The form of the policy, the risks undertaken, and the amount of the premium vary considerably, but a policy has been provided and approved by the Royal Automobile Club which has tended to produce a certain amount of uniformity. Cars will usually be insured against fire and theft—the latter should include the theft of parts or accessories—but the principal risk is that of accident—accident due to collision, or while the car is being cleaned or being conveyed, or wilful damage, while some policies include a claim owing to breakdown.

It should also be considered whether it is necessary to cover the car against risk while abroad or during transit.

Claims which may be made against the owner of the car by other parties form an even more important element to be insured against, and it is advisable to cover these, whoever may be driving the car. This again may be coupled with accident insurance or workmen's compensation insurance.

As to the premium, according to the Royal Automobile Club policy, this is based on the horse-power and valuation of the car—a 10-h.p. car valued at £300 being subject to a premium of from £8 to £9; a 50-h.p. car valued at £1000 to a premium of from £23 to £26. These premiums are often subject to reduction where no claim has been made in the previous year, or where more than one car is insured, and under other circumstances. The owner should make careful enquiries as to the various offices and the policies which they issue, having in mind his own particular requirements, before entering into any contract to insure his car.

[Authority.—*Mahaffy and Dodson*, "Law Relating to Motor Cars".]

THE MOTOR INDUSTRY

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The motor business is one of those extraordinary industries in which, developed out of a sport, the principles generally applied to the conduct of a commercial undertaking are in a very large degree disregarded. This statement is not intended to convey the impression that business training is of no value, but the possession of such experience does not necessarily lead to success, unless associated with some special knowledge of its peculiarities.

In the earliest days of the movement, i.e. the 'nineties and the first year or two of the present century, motor cars were naturally produced in very small quantities, except in the case of possibly one or two firms in each of the following countries — France, Germany, and the United States. The leading firm was Panhard & Levassor of Paris, one of the first to fit into a carriage motors designed by Daimler, the father of the light internal-combustion engine. It was the success attending their use which first opened up the possibilities of the motor car. At the same time Mors, Peugeot, Serpollet, and others were constructing cars on lines which have since become obsolete, as also were Benz and Daimler's own firm in Germany. Steam cars of a now equally obsolete type were being produced in America, whilst in Britain a small number of cars were being constructed on the lines of Panhard and other constructors, in addition to a few experimental cars of more or less original design, which met with very little success.

In consequence of this limited output, it might be said that each particular car had its own history, either by reason of its participating in some racing event, surmounting a particular hill, having covered some more than ordinary distance, or been driven by one of the celebrities of the day. Under these circumstances it can easily be imagined that the purchase of a car was a question of "barter" much in the manner surrounding the sale of a horse. Such dealing was almost entirely in the hands of expert drivers of motor cars, the majority of whom had been associated with the cycle industry at an earlier date. It is true that certain houses did exist where motor cars were supposed to be held in stock, where one could perhaps inspect a car and purchase, but such places of business were in the hands of the men already referred to, and as a rule the stock, unless it consisted of some machine which could scarcely be called a practical one, was conspicuous by its absence.

Out of such a commencement as this the present industry has grown. Similar conditions still exercise a large amount of influence on its conduct. It can therefore be easily understood that the difficulties attending the business organization of the motor trade are more than ordinarily complex. The business man faced with the organization of a manufacturing concern has to consider the production of a car, or cars, which shall compete with those of his rivals, and therefore has to determine as to how far he can, in his own particular motor car, embody the essential conditions which make for success in the industry. It may be price, speed, silence, comfort, or reliability. He may attempt to produce a vehicle embodying all these points, but it will generally be found that certain firms aim at a particular object, and decide how far they can embody these qualities in the car they are producing.

The Manufacture of Cars

The manufacture of motor cars can be classified as coming under the heading of a moderately light

engineering business, and the rules applying to the conduct of such works are followed in the production of the car previous to its final erection and passing over for inspection, testing, and completion. It is at this stage that the difficult nature of the industry becomes evident, as then the assemblage of the products of many trades has to be made into the complete motor car ready for use on the road. When it is appreciated that the motor car is built up of many complex parts, such as carriage work, pneumatic tyres, ignition apparatus, ball bearings, radiators, frames, wheels (now that the wire-spoked wheel is so rapidly becoming a standard, this has developed into a separate trade), not to mention sundries such as lamps, horns, and other necessary fittings, in addition to the following foundry products—aluminium, gun metal, bronze, malleable and cast iron, together with forgings, press work, stampings, and in most modern cars tubing for many and various purposes, as reasonable lightness is a necessity, one can appreciate the difficulties surrounding the production of a good car.

It can further be readily understood that the increased competition, brought about by the improved design and methods of construction, added to the large outputs now being achieved by makers all over the world, do not lessen the anxieties facing the manufacturing side of the industry.

The Selling Side

Turning to the selling side of the business, here again the considerations are if anything more difficult. Assuming that the manufacturing staff are producing a car which properly fulfils the programme agreed upon, the consideration then arises as to the methods to be adopted to place the cars before the public. Shall they be sold through the motor agents of the country—a branch of the business which will be dealt with later? Shall they be distributed throughout the country or the world by means of the company's own shops? And further, how is the public attention to be drawn to the product?

The industry has a special technical press of its own, which can be classified as able and very energetic both in competing for advertising contracts and public favour. In addition, the general press of the country now devotes a considerable amount of attention to motoring matters, and frequently allocates special space for motoring advertisements. Under these circumstances it is not usually a question of how the advertising programme shall be conducted, but of the amount of money to be expended thereon, and the best method of allocating that sum.

Turning to the actual disposal of the cars to the public, the majority are to-day distributed by motor-car dealers, usually described as motor agents, from business premises which are termed Motor Garages. The proprietors of these businesses act as selling representatives for different manufacturers. It can be stated that they are never agents in the legal sense of the word. They place certain contracts or orders for cars with the manufacturer at the beginning of each season, and in turn distribute these to the public. The usual method adopted of selling a car upon learning that a possible sale can be effected, or after receiving an enquiry from a would-be purchaser, is to give certain trial runs, which are usually undertaken by a type of first-class experienced driver known as a demonstrator. Many abuses exist in this connection, and a very great waste undoubtedly takes place, not only through the demonstrator's incapacity and carelessness, but by reason of people taking long trial runs without any real intention of purchasing.

The Use of Cars

Assuming that the car has passed through its successive stages of manufacture, distribution to the agent, and purchase by the owner, a further and probably the greatest difficulty in connection with the business arises in connection with its use by the owner or his appointed driver. It can be stated, without fear of contradiction, that no piece of mechanism has been developed to an almost perfect state so rapidly as the modern motor car. Its reliability has at the same time been increased to a degree which must have been unhoped for in the early stages of the movement; but in spite of that the motor car still remains a delicate piece of machinery, capable of moving at a high speed, in the majority of cases unskilfully attended to, if not woefully neglected, and it is in connection with such neglect that the greatest difficulties in the motor business most frequently arise. It is therefore all the greater testimony to the motor car that it has firmly established itself as not only one of the most pleasurable pastimes, but that it has become so absolutely necessary that the day is not far distant when, except for special purposes, it will have entirely supplanted the horse. Not only has the motor car taken the place of the horse in most households, but it is rapidly being recognized as a necessary item in the distribution of ordinary commercial goods.

CHAPTER XXIV

NUISANCE AND TRESPASS

Trespass—Public and Private Nuisances—Nuisance in Scots Law

Nuisance is an unwarranted and unreasonable interference with the enjoyment of the health, comfort, property, or rights of others. The borderland of the law of Nuisance is often hard to distinguish from that of the law of Negligence, or in other cases from that of the law of Trespass.

TRESPASS

A trespass may be defined as an unwarranted invasion of a right of possession to land or goods. An owner or any person having a right of possession may maintain an action against a trespasser. The possessor of land is entitled to the uninterrupted possession of the surface, also of the air above and the soil, and, in most cases the minerals, beneath the land. The possessor of goods is generally entitled to have them undisturbed and even untouched without his consent. Almost any invasion of these rights, however minute, is a trespass. Some invitation to handle goods may be implied. For example, to hang coats outside a shop would justify passers-by in feeling their texture if they had any idea of purchasing. With regard to land, any invasion of possession whatsoever is a trespass. To burrow beneath the soil of another's property, to build a shed with a roof projecting beyond the boundary of one's own land, to walk across a stubble field or throw water or refuse into a neighbour's yard or garden, are all alike actionable trespasses Common actions for trespass are those in connection with illegal or excessive distress for rent. (See Chapter IX of this Part.)

The Courts do not favour actions for merely nominal trespass unless a right or question of title or easement is in issue. An action for trespass may be merely a convenient method of deciding an important dispute of this nature, and a verdict for a farthing damages, or an injunction, or a declaration of right, may be all that is sought. If, however, no such question is at stake, a plaintiff who successfully establishes a purely technical trespass may have to pay the costs of both sides.

A mere trespass by itself cannot be the subject of criminal proceedings. The common legend on notice boards, "Trespassers will be prosecuted", is an idle threat. Unlawful and malicious damage committed by a trespasser may, however, give rise to a prosecution. Unlawful trespass on a railway, and trespass in pursuit of game (see p. 85) are offences. Trespass by cattle is regarded as on the same footing as trespass by their owner.

Unwarranted Invasion

To be a trespass the invasion of a right to possession must be unwarranted. A warrant may arise under Act of Parliament, licence or permission of the possessor, an easement, a superior title to the land or goods, the necessity of saving life or property, or an order of Court. A mistaken belief in a right is no justification for a trespass, nor can any reliance be placed upon a warrant which is exceeded. For example, a licence may entitle a man to cross a field. This licence can in no way be relied upon if while crossing the field the licensee exceeds his rights

and damages the property. His excess renders him a trespasser, and he is in the same position as a man who had no right to be in the field at all. A buys a ticket and enters a theatre; B enters a shop to make a purchase; C gets on to an omnibus and is ready to pay his fare; D, a factory inspector, enters a factory to perform his duties; or E, a fireman, enters a house which is on fire: none of these are trespassers, because they are entitled to act in this fashion; but any one of them who misconducts himself may become a trespasser.

Remedies for Trespass

Anyone in possession of property may bring an action against the trespasser claiming damages, an injunction, or a mere declaration. He cannot take the law into his own hands, but he may remove a trespasser who refuses to go away, and may use a reasonable amount of force, if necessary.

Conversion

Intermeddling with another's property, even with good intention, may be a wrong, for any unauthorized act which deprives another of the possession of his property is a conversion. It is a conversion when a hire purchaser sells the goods before all the instalments are paid; or when an auctioneer sells goods without the true owner's authority, or where a person not executor or administrator intermeddles with the goods of a deceased, even though with the intention of benefiting the estate.

Nuisances akin to Trespass

While a trespass is based upon the mere infringement of a right of possession, although no actual injury is occasioned, a nuisance is always based upon a loss of enjoyment, and an action cannot be sustained unless there is some injury. Rights to the uninterrupted enjoyment of landed property may, however, be infringed by a minute injury or loss of enjoyment, as where the branches of a tree or the eaves or gutters of a house overhang a neighbour's property, or are so constructed as to cause rainwater to drip on to the neighbour's land or buildings.

Trespass in Scots Law

In its effects the Scots law of trespass does not differ very materially from that of England. There are, however, one or two points of difference which are worth while remembering. The word "trespass" was unknown to early Scots law, and is an importation from England, where, as has been seen, it is used in a wide sense to denote the various wrongs to which the common-law remedy, under the same name, is applicable. In Scotland it is popularly and correctly used to denote any temporary intrusion, entrance, or being upon the lands or heritages of another without his permission, but its application to any other kind of "trespass", such as is known to English law, is unknown in Scotland. It is one of the incidents of property in land that its owner or proprietor is entitled to prohibit all trespass within his grounds. This exclusive right yields, as in England, wherever public interest or necessity requires that access be allowed, as, e.g., for the purpose of extinguishing a fire, pursuing a criminal, or the destruction of dangerous or noxious animals. The only remedy in Scots law to a proprietor whose lands or property have been intruded upon, is that known as interdict, by which a person or persons may be interdicted or prevented from entering or trespassing upon the owner's land or property in the future. The only penalty to which a trespasser can be subjected (apart from destruction of property or other malicious mischief) is the expense of an application for interdict, decree for which will be granted against him, in the case of a well-founded application. If, after a decree of interdict has been granted, the person or persons so interdicted are guilty of trespass they become liable in penalties as for a contempt of Court, and may be punished by a fine or a term of imprisonment. But it is a rule of Scots law that a decree of interdict can be obtained by an owner or proprietor who alleges trespass on his land only if he can show reasonable grounds for an apprehension that the trespass will be repeated, or there is evidence of an intention on the part of the trespasser to commit trespass or give offence to the proprietor. As in England, therefore, a notice to the effect that "trespassers will be prosecuted" is meaningless, since neither civilly nor criminally can a trespasser be made liable for any act of trespass which he may have committed, and the use of violence towards a trespasser technically constitutes an assault, and founds a claim of damages at his instance against the proprietor or a servant acting within the scope of his duty and in accordance with his instructions. All that the proprietor or his servants are entitled to do is to ask the trespasser to leave the grounds or premises, and to inform him that if he persists in his acts of trespass an action of interdict will be instituted against him. By the Trespass Act of 1865, which in certain respects modified the common

law, every person who lodges in any premises, or occupies or encamps on any land which is private property, without the consent of the owner or occupier, and every person who encamps or lights a fire on or near any private road, or enclosed or cultivated land, without the consent of the owner or occupier, or on or near any public road or highway, is liable to a fine of 20*s*. or imprisonment for fourteen days for a first offence, and to a fine of 40*s*. or imprisonment for twenty-one days for a subsequent offence.

Trespassing in pursuit of game is, by the law of Scotland, a *quasi*-criminal offence, which is governed by statute, and is quite distinct from trespass in its ordinary significance. By the Night Poaching Acts it is an offence, punishable by fine or imprisonment, for any person to be on any land, open or enclosed, with any gun or other instrument for the purpose of taking or destroying game. By the Day Trespass Act any person who is or enters upon any land, in the daytime, without leave of the proprietor, in search or pursuit of game, &c., is guilty of an offence for which he may be fined or imprisoned. Such trespassers may be required, by any person having the right of killing game on the land, or the occupier thereof, or by any person authorized by either of them, to quit the land, and to give their names and addresses: in case of refusal they may be arrested. By the provisions of the Act civil actions for trespass are not precluded, but no such action is competent at the instance of anyone who prosecutes, or concurs in prosecuting, anyone under the Act.

While the word trespass in Scotland has reference solely to trespass on lands or property, it must not be imagined that for the various wrongs included under the word in English law no remedy exists in Scotland. In theory, no wrong exists for which there is not a legal remedy; and for the various classes of wrong embraced in England under the generic term trespass, Scots law provides remedies, though under different names, which in effect are in no way dissimilar from those provided by English law.

PUBLIC AND PRIVATE NUISANCES

A private nuisance interferes with a particular right of individuals. A public or common nuisance interferes with a right common to all. If, however, a public nuisance peculiarly affects an individual, it may also give rise to a private action. For example, everyone has a right to pass freely along a highway. An obstruction which prevents the full exercise of this right, is a public nuisance. If A is hindered from going along the highway and is compelled to go to the trouble of removing the obstruction, he suffers in just the same way as any other members of the public who want to use the road, and he cannot bring a private action. If, however, A's wagon is driven down the road and his horses run into the obstruction and are injured, then A has suffered a peculiar, direct, and substantial injury beyond that occasioned to other members of the public using the highway, and he can recover damages.

It is at times very difficult to say exactly what amount of peculiar injury must be shown to enable a private action to be brought when a public nuisance has been created. For example, although an obstruction in a navigable river is a public nuisance, it has been held that a trader whose barges have already commenced their voyage down the river at the time the nuisance is created, and who is compelled to unload his cargoes and carry them overland, can claim damages for the extra expense occasioned to him. Whether he can maintain an action if his barges have not started until after the obstruction is placed in the river is uncertain.

A private nuisance can only give rise to a civil action. A public nuisance, as well as giving rise to a claim for an injunction at the instance of the Attorney-General, is technically a crime. It includes any act not warranted by law, or any omission to perform a legal duty which endangers the life, health, comfort, convenience, or morals of the public.

Highways

In determining whether a nuisance has been committed by an obstruction to a highway it is the amount of the obstruction which must be regarded. An obstruction to a highway—which term includes a road, a bridge, a harbour, or a navigable river—may only affect a small portion of it, and may leave plenty of room for all ordinary traffic. It may even, upon the whole, benefit rather than harm the public, as when an embankment is erected in a harbour. But it is a nuisance if the obstruction is sensible and material. If it actually does interfere with the general right of free passage in all directions it is a public nuisance. An obstruction may, however, be so insignificant as not to create a nuisance at all. A van

which remains stationary in a public street for a short time while it is being unloaded, would cause too slight and temporary an obstruction to be a nuisance. It is a normal usage of the highway by the van owner. Yet if one side of a street is constantly occupied for hours at a time, day and night, by a string of wagons loading and unloading at a warehouse, one wagon at least being practically always there, this is a nuisance, even though two vehicles could pass abreast on the unoccupied portion of the street. What is an excessive user of the street or footway in connection with vans loading or unloading at business premises is a question of fact in each case. Beer barrels are commonly taken from a wagon by the kerb and lowered into the cellar of a public-house. If this is done quickly and with care it is not a nuisance, although some inconvenience must be caused to passers-by. If this operation is carried out very slowly or carelessly, it may cease to be a reasonable exercise of the universal right to use the highway and become a nuisance.

Highways are created by Act of Parliament, by prescription, or by an actual or presumed dedication to and acceptance by the public. A highway may be dedicated subject to certain restrictions, as, for example, subject to the existence of a cellar flap, and steps leading up to a house, which would be a nuisance if the road had not been dedicated with this proviso. Apart from any such restrictions imposed at the time of the original dedication, the public have the right to pass over every part of a highway and to sail over every part of a public harbour or navigable river. Any obstruction which materially interferes with this right or renders the exercise of it dangerous or inconvenient is a nuisance.

To do anything to the surface of a road, to encroach upon it, to dig a hole in it, to undermine it or to remove adjacent soil so as to make it give way, to render it dangerous by leaving unfenced or unlighted excavations near it, to erect telegraph poles or to lay down tram-lines, is illegal unless such a course of action is specifically sanctioned by Parliament. When the necessary commission of nuisances in carrying out the installation or upkeep of tram-lines, drains, or pipes is authorized by statute, only such nuisances are condoned as cannot with due care be avoided. A common case before the Courts is where, in pursuance of their statutory powers, a water or gas company is repairing a main and during these repairs leaves an obstruction without sufficient light or other warning to passers-by at night, or, after completing the repairs, leaves a ridge or mound in the road. For these nuisances—which with reasonable care would have been avoided—the company is responsible both to the public and also in damages to any person who has sustained injury through such negligence, despite its statutory powers. (See also Chapter XXI of this Part.)

It is an offence to place a barricade upon the road, to allow anything to overhang at a height which interferes with the free passage of the public, or, in most cases, to expose wares for sale on the pavement of a street in front of a shop. There, however, is one apparent exception to the rule that there can be no prescriptive right to commit a public nuisance, for if the right to hold a market has been acquired by long user, then the highway may become a recognized part of the market. So, too, a custom to erect a stall on the highway during a fair is a valid custom, if enough space is left for the passage of the general public. On fixed days in many towns horse fairs are held in certain streets. During the continuance of the fair horses are permitted to be stationed for sale in large numbers on the highway, and to be paced up and down, to an extent which would at other times be an actionable nuisance.

Not only permanent but also temporary obstructions of the right of free passage are offences. Sawing timber or killing cattle in a highway, holding a public meeting or attracting large crowds in a frequented thoroughfare by some performance on or near the road, or doing any such things as render passage along it dangerous or difficult, are nuisances. Thus excessive traffic in the shape of a very heavy vehicle such as a traction engine is illegal, although even traction engines may lawfully be used on highways if properly managed and constructed, and not exceeding the specified weight or width. (See Chapter XXIII of this Part.) Blasting near a highway in a manner which causes large pieces of rock to fall on it, letting off fireworks, or placing near a road anything which will terrify horses or cattle passing along it, are other instances of nuisances.

Most of the nuisances already mentioned are sins of commission. What are generally regarded as sins of omission are equally important. It is a nuisance to allow a lamp bracket, a sky sign, wall or building in a ruinous and insecure condition, to overhang a highway; to leave an excavation or hole unfenced and unguarded in or near a road; or to illumine insufficiently a place of popular resort. It is also a nuisance to have a fence adjoining a road in such condition that if children clamber up it it will fall upon and injure them.

The most important of this class of nuisance is that of failure to repair a highway. A high-

way which was dedicated to the public before 1836, and any highway since that date which has been dedicated to and accepted by the public, is, with but minor exceptions, repairable by "the inhabitants at large". It is the common-law duty, apart from particular statutes, of the inhabitants of a parish to repair the highways within their parish. The authority for repair of main roads and bridges in a county is now the county council, either directly or by subvention to the district council. Other public highways are maintained by the district council. A parish council or parish meeting may complain to a county council of a district council's failure to repair the highways efficiently, and the county council can force the district council to discharge its duty.

The duty of a council is not only to repair, but to protect public rights of way and prevent obstructions and encroachments. If a highway is dedicated to but not accepted by the public, no one is generally bound to keep the highway in repair. A private street in an urban district may, however, be taken over by the local authority after being properly paved, lighted, and made good. The authority may give notice to the owners or occupiers of premises adjoining such a street to make it good; and, in case of failure to comply, may do the work and recover the cost from those in default.

Any person or authority liable to repair and failing to keep in repair a public highway may be indicted as for a nuisance. An action for private nuisance arises when damage has been caused by repairs to a road which have been faultily carried out. When an accident is due not to bad repair but to non-repair, no action can be sustained unless liability for accidents due to non-repair is expressly or impliedly imposed by statute on the repairing body: e.g., by the Tramways Act, 1870, tramway companies are not only bound to repair the road over which their lines run, but are liable for accidents due to their neglect of this duty. In most cases, however, if A falls into a hole in the road because the authority responsible for repairing has repaired it badly, he can recover damages; while if the hole is caused by neglect to repair at all, A is without this remedy. As to excessive user of roads, see Chapter XXIII of this Part.

Difficult questions arise when the repairing authority are also undertakers for the supply of water, gas, &c., and, by the wearing away of the road, anything in connection with such undertakings is left protruding above the surface. If a stopcock was constructed with all adequate precautions and properly made level with the road, the authority will not be responsible because the road has worn away and left the cover projecting and liable to injure those using the road. In such cases the difficulty is to determine what precautions are necessary when the stopcock is placed in the road, as once it is properly fixed there is no cause of action.

Nuisances in regard to bridges and navigable rivers are in most cases similar. To divert the water of a navigable river so as to leave part of it no longer navigable, to change the force and direction of the current by artificial works so as to endanger boats, are nuisances of some frequency and importance.

In addition to the various nuisances to highways already mentioned there are a great many others. By-laws and regulations are made by local authorities under various statutes, dealing with such questions as the control of traffic, open spaces, public parks, sky signs, building line, and the prevention of such things being done near a highway as will incommode passers-by. These by-laws are more stringent in the metropolis than elsewhere, and more stringent in urban than in rural areas. For breaches of such by-laws, special penalties are provided.

Nuisances to Public Morality

In addition to offences which are obviously immoral or indecent, any such acts as are calculated to deprave the public mind are indictable nuisances. Many offences against good manners are dealt with by by-laws. The keeping of gaming houses, betting places, or lotteries, betting in streets or public-houses, fortune-telling, drunken and riotous behaviour in public places, are common offences.

Within twenty miles of London a licence must be obtained for any building, garden, or place which is to be used for public performances of dancing, singing, or music, or other like public entertainment. An unlicensed place for public dancing, music, or other public entertainment of the like kind is regarded as "a disorderly house". Urban district councils may adopt the powers of licensing given by the Public Health Acts Amendment Act, 1890, and impose penalties. No stage plays may be publicly performed in any place in Great Britain unless letters patent or a licence are obtained. If such permission is not obtained, a householder allowing the public performance of stage plays is liable to a penalty of £20 a day. Licences must be obtained for music halls, theatres, cinematograph shows, and other such performances, from the particular licensing authority for the district. (As to Sunday Trading, see Chapter VI of this Part.)

Nuisances to Health and Convenience

Under this heading all nuisances, whether public or private, save those already dealt with, may be included. Infringements of private rights of way, of rights to light, to support, or to a flow of water, public or private nuisances of smoke, smell, noise, vibration, building operations, noisy entertainments, overcrowding in houses, impurity of air or water, danger of insanitation, are most important. For a nuisance to be created by any infringement of such public or private rights the infringement must be material and substantial. But in the case of these nuisances it is the condition of affairs which remains after the infringement which is considered, not merely the amount of the infringement itself. The test to be applied is whether under all the circumstances the condition remaining is such as a reasonable man would regard as fairly comfortable, commodious, or healthy. For example, if a private right of way for vehicles is enjoyed over a broad path, the person entitled to this right cannot complain if the owner narrows the path by a foot; if the path were already very narrow, the removal of a foot might render the path useless or very difficult for the passage of carts, and thus constitute a nuisance.

The basis of the law as to nuisance is that everyone is entitled to enjoy his rights or property in ordinary comfort, but must endure the effects of a reasonable use of his neighbour's rights or property. The old-established legal maxim is "*Sic utere tuo ut alienum non lædas*", i.e. "Use your own property in such a way as not to injure others". If an unreasonable use of property by a neighbour is productive of substantial discomfort an action for nuisance can be sustained. Although a man is entitled to ordinary and reasonable comfort and convenience, he is not entitled to enjoy all the amenities and pleasures which his property may in its existing state afford him. A lovely view may have been the greatest inducement to purchase a house, but no action could be brought if the view were spoilt by the erection of unsightly cottages. But if the erection of the thing complained of is in itself illegal and a public nuisance a loss of view may give rise to a private claim for damages.

So, too, the excellent light which would come through the windows may have led a jeweller to erect or buy a warehouse, show room, or sorting room in a particular spot. Yet he cannot recover compensation if his windows are entirely darkened by a new building erected on adjoining land unless he has acquired a right of light. (See also Chapter XX.)

In every case, in judging what is the ordinary comfortable enjoyment of property to which a man is entitled, various circumstances must be taken into account. A householder must put up with the noise of his neighbour's piano, but might object to the establishment of a music academy next door. The repeated ringing of loud church bells may be an actionable nuisance to the private residents near by. The ordinary noise of children must be tolerated, but an unruly and ill-managed school or even family might constitute an actionable nuisance.

With regard to noise, some local authorities have adopted special by-laws, under which shouting, crying of goods, and even the unnecessary sounding of motor-horns, may be penalized.

The permission of the local sanitary authority is required for the use in a factory or other place of a steam whistle or trumpet.

Locality

It is reasonable to expect purer air, more light, less noise, smell, and smoke in the country than in the town. The sensitive nostrils of Mayfair may well be offended by what is to Whitechapel the savoury odour of a fried-fish shop. In a manufacturing quarter an ordinary factory with all its noise and smoke is no nuisance; in a residential quarter it might well be one. Generally speaking, a factory must use such modern inventions as tend to assist the consumption of smoke, limit noise and offensive smells, and keep the air of the neighbourhood comparatively pure and healthy. By-laws are made to such an end. In determining whether or not any diminution of enjoyment amounts to a nuisance, the Courts will not favour the views of hyper-sensitive persons and districts. The character of a district will be considered, but the fact that such district was not only residential, but had in the past enjoyed exceptional quietness beyond ordinary residential districts will not be taken into account. It is notorious that not only the amenities of a district, but the selling or rental values of many properties, have been enormously affected without there being any remedy at law.

Class and Use of Building

The class of building must be considered in determining whether or not a nuisance has been created. A dwelling house, a shop, a warehouse, a stable, and an outhouse are for such different purposes that what may be unendurable to occupiers of the one, may be but a slight inconvenience to the other. An infringement of right which

renders any building unsuitable for the purposes to which such a building is generally put will be a nuisance; but a degree of noise which would render a dwelling house, a hotel, or a restaurant really uncomfortable may not entitle the owners of stables or outhouses similarly affected to maintain an action for nuisance.

It is now established that the use to which a building is actually put is not material in deciding whether a nuisance has arisen, although it may affect the amount of damages recoverable. On the other hand, the fact that a room is only being used for storing packing-cases will not prevent an action being brought for an obstruction of light to the windows of that room which would be a nuisance if the room were used for ordinary purposes to which it might be put, although it may affect the amount of damages.

Offensive Trades

As to offensive and dangerous trades, see Part I, Chapter XIII. If any of these trades is carried on either in rural districts or in accordance with the prescribed conditions in London or in urban districts, the trade must still be so managed as to create no nuisance. For example, although naphtha is stored strictly in conformity with statutory regulations, a prosecution for public nuisance will succeed if the naphtha is kept in a populous centre in such quantity as to endanger the public.

In ordinary trades, too, nuisances commonly arise, especially from manufacturing processes. If a factory causes smell, smoke, steam, or noise to such an extent as to make the neighbourhood unhealthy or extremely uncomfortable, not only will a crop of private actions for nuisance arise unless the manufacturer is protected from such actions by prescriptive right, but he will also be liable to prosecution, from which no prescriptive right can protect him.

In a manufacturing district a certain amount of noise, smell, smoke, and steam is inevitable, and the law recognizes that for the common good some considerable amount of inconvenience must be endured. If, however, a factory owner transgresses the local by-laws, he may be prosecuted. If he renders an adjoining property unhealthy or uncomfortable, he must pay damages. Outside the trades specially recognized by law as dangerous and offensive there are few, if any, which cannot with ordinary care be carried on so as to create no nuisance in manufacturing districts. Manufacturers have been known to plead that it was essential to the public welfare that the class of goods they made should be manufactured. Still, if the manufacturer finds he is creating a public nuisance that plea is of no avail; he must vary his processes or choose a different site.

The pollution of water is another nuisance commonly created by manufacturing processes. Not only is pollution which may affect the health and comfort of users of a river or of people living in the vicinity a nuisance, but it is also an offence to throw ashes, dust, filth, or rubbish into any stream, or to foul or pollute in any way any well, fountain, or collection of water used for drinking or domestic purposes. If any sewage, any solid refuse of any manufacturing process or of a quarry, or any noxious or polluting liquid from any factory or manufacturing process is permitted to foul a river, an offence is committed under the Rivers Pollution Prevention Acts.

It should be noted that if A and B each discharge into a river some chemicals which in themselves are harmless, but in conjunction are harmful, both may be held guilty of nuisance.

(As to pollution by gas, see Chapter XXI of this Part; and for offences in connection with the sale of food and drugs, see Part I, Chapter XIII.)

Nuisance from Animals

Responsibility for the damage caused by animals may conveniently be dealt with under the heading of nuisance, although the laws of negligence and trespass are involved. In regard to trespass by animals, the law is in accordance with common sense. Owners are not responsible for the trespass of dogs, cats, pigeons, or other animals of such a wandering tendency, but are responsible for trespass by horses and cattle which can with reasonable prudence be confined to their owner's grounds. When cattle are being driven along a road it is impossible to prevent occasional trespass, and in such a case no action can be brought unless negligence is shown in removing them. Any man who rides a horse must keep him in hand and prevent damage which an ordinarily skilful rider can prevent, and no one must ride an ungovernable horse in places which are open to the public.

Horses, cattle, pigs, sheep, and goats must not be allowed to stray unattended on a public highway. No animal suffering from an infectious disease may be sent to market, brought into a public place, or allowed to wander at large. Animals must be so housed as not to render the neighbourhood unhealthy or unpleasant. Premises must not be used for the so-called sports of bull or bear baiting, dog, bull, or cock fighting.

Animals which are naturally wild, dangerous, or mischievous, and domestic animals which are known by their master to be of a ferocious or mis-

chief-loving temperament, are kept at their owner's risk. He is responsible for their depredations, even if it is through no negligence on his part that they escape, and he must in all circumstances prevent their being at large. A savage dog may be let loose in a dwelling house at night, but not outside the house. In just the same way spring guns and mantraps are illegal if set outside, but may be set inside a dwelling house at nighttime. The setting of spring guns and mantraps out of doors with the intention of injuring trespassers is a misdemeanour. An owner of a domestic animal is responsible for the results of any particular kind of mischief to which he knew that it was inclined. But when damage is done by a domestic animal, the plaintiff must prove the owner's knowledge of a mischievous propensity in that direction. An exception is made in the case of a dog worrying cattle, sheep, or horses, where there is a statutory right to recover damages in any case.

Statutory Nuisances

Under the Public Health Acts and similar statutes, many prescribed offences are penalized in the interests of public health. Some of these powers are exercised by every local authority.

Orders of various kinds may also be made by the Local Government Board under particular statutes, e.g. the Dairy Order; and by the Home Office or Board of Agriculture.

Power to make By-Laws

Any local authority may make reasonable by-laws on the following subjects, among others:—The prevention of the spread of infection; the regulation of lodging houses and of the condition of cowhouses and dairies; the cleansing and flushing of closets, ashpits, and cesspools; the removal of house refuse, snow, filth, dust, ashes, and rubbish; sanitary precautions in housing animals; the proper and healthy ventilation, structure of walls, floors, and foundations, and height of living rooms in new buildings; proper drainage of houses, and the closing of the whole or part of buildings unfit for human habitation.

Urban authorities may regulate the level and width of new streets, the construction of new buildings, and the provision of precautions against fire. County councils and the councils of municipal and metropolitan boroughs may make by-laws for their areas against public nuisances for which no summary procedure is provided by statute. In London by-laws may be made by the County Council and the borough councils regulating matters connected with drains and sewers and many other matters. Sanitary authorities in London make by-laws to prevent nuisances arising from dirt or rubbish in streets, from offensive liquid matter from trades or factories running into uncovered places, and as to the proper paving of yards, and accommodation of animals. Every such sanitary authority can also regulate by by-laws tents or vans used for human habitation, lodging houses, and the prevention of pollution of tanks or cisterns for keeping water which may be used for drinking purposes. The London County Council can also regulate the structure of the premises and method of conducting offensive trades, the removal of offensive matter or liquid, the disposal of house and other refuse, the proper keeping of closets, ashpits, and cesspools.

By-laws of a local authority must be confirmed by the Local Government Board, or in the metropolis by the Secretary of State, and those of a tramway authority by the Board of Trade.

Factories and Workshops

Every factory or workshop must be kept in a cleanly state, ventilated in such a manner as to render as harmless as is practicable all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on there which may be injurious to health.

A notice is to be affixed to every factory and workshop specifying the number of persons who may be employed in each room.

Factory inspectors must inspect factories and workshops from time to time to see whether all statutory requirements for the health of employees are observed. Inspectors of nuisances and medical officers of health also see that healthy conditions are maintained.

At the instance of the district council or of an inspector, a Court of summary jurisdiction may prohibit the use of a factory or workshop which is in such a condition that in the opinion of the Court any manufacturing process or handicraft carried on therein is dangerous to health, life or limb, until such works have been executed and such alterations made as will remove the danger. (See Chapter X of this Part.)

Smoke and Fire

Fines are imposed for allowing a chimney to catch fire. A manufacturer must not allow his chimney to pour out black smoke and must see that all his fireplaces and furnaces consume their own smoke as far as is practicable and consistent with their efficient working.

Acquisition of Rights of Enjoyment

A nuisance is an interference with a right of enjoyment, and some private rights to enjoyment not being incidental to the occupation of property are only obtained by prescription or agreement. Every occupier of property can maintain an action for nuisance if his property is rendered unwholesome by offensive smells; but a right to light, to support for buildings (not for mere land unburdened by buildings), to a flow of water, or a right of way, must be acquired.

Special Defences

When complaint is made that a nuisance has been created, the most usual defences are: (1) a denial; (2) that the nuisance has been authorized by statute; (3) that the right of enjoyment has not been acquired or has been lost in cases where such right is not necessarily incidental to the occupation of premises. In the case of private nuisances three other defences are frequently put forward: (1) that the plaintiff has acquiesced in the creation of the nuisance; (2) that the nuisance is justified by prescription; or (3) that the plaintiff came to the nuisance.

Acquiescence

If the plaintiff has by his conduct encouraged the defendant to carry out certain work he is estopped from alleging that this work creates a nuisance and entitles him to damages. Such acquiescence must consist of something more than merely not interfering with the execution of the work complained of, but approving plans or suggesting alterations would be sufficient.

Prescription

If the plaintiff has for upwards of twenty years permitted the defendant to do something amounting to an actionable nuisance and physically capable of prevention by the plaintiff, the defendant can successfully claim a prescriptive right to continue the nuisance without interference. An increase in the amount of the nuisance would, however, be actionable. No prescriptive right can be obtained unless the nuisance was an actionable one. If, for example, the noise of machinery does not amount to a nuisance until a new building is erected by a former neighbour closer to the machinery no right has been acquired to continue the noise now that by the erection of the new building it has become for the first time a nuisance. No prescriptive right can be acquired to commit a public nuisance.

Coming to a Nuisance

From what has just been said, it is clear that it is not a sound defence to allege that the plaintiff became the occupier of premises which had previously been subject to a nuisance, unless the defendant had acquired a prescriptive right. Nor can the fact that the plaintiff already endures a similar kind of nuisance from other neighbours entitle the defendant to add to his inconvenience and discomfort.

Remedies

When a private nuisance is created, there are three remedies: (1) abatement, (2) an action for damages, (3) an action for an injunction.

The first remedy is constantly used when the nuisance consists of an obstruction which prevents a right of way or a right of common. In such cases it is generally quite safe for a man to take the law into his own hands and to remove so much of the obstruction as hinders him from exercising his rights. If a building is erected on his property, he may safely pull it down. If goods are left lying about or animals are found straying on his land, a species of abatement known as "distress damage feasant" entitles a man to impound the goods or animals and refuse to give them up until he has been reasonably compensated for any injury done to his property. In most other cases of private nuisance abatement should not be attempted, unless health is endangered, without a previous notice to the person responsible for the nuisance. If a mistake of right has been made, a would-be abatement may be found to be a serious trespass. Abatement of a nuisance upon the land of another is seldom advisable.

Damages are compensation for depreciation of property through the existence of a nuisance, and for the discomfort or inconvenience suffered. An injunction is a prohibition upon the continuance of a nuisance. In many cases both may be awarded to a successful plaintiff. An injunction which would necessitate expensive alterations will generally only be granted when a monetary recompense would be insufficient. The Courts will not restrict the remedy to damages, in the case of a continuing nuisance infringing a valuable right, if the effect of so doing would be to force the plaintiff to sell his right. Upon the other hand, if a covenant in a long lease of residential property binds the lessee to use the premises purely for residential purposes, but after some years all other

property in the neighbourhood becomes used as business premises, the lessor would not be granted an injunction to restrain the lessee from using his house as offices—damages in such a case would be adequate.

Public Nuisances

Private causes of action arising from the existence of public nuisances are remedied in the same fashion as private nuisances. A public nuisance which does not arise from a mere omission may be abated by a private individual to the extent to which it interferes with his exercise of the universal right, but no further. If a gate is put across a public footway, a passer-by who can push the gate open and continue on his road should not smash the gate to pieces. If, however, the obstruction consists of a fence which cannot be otherwise passed he would be entitled to break it down. Local authorities and officials are granted by statute powers of abating a considerable number of nuisances, chiefly affecting sanitation and the health of the public. In exercising such statutory powers care must be taken by them to comply with all the requisite notices and prescribed procedure. The general remedies for a public nuisance are by a civil action at the suit of the Attorney-General or by indictment. If no statute prescribes a special method of procedure, the proper course is to proceed against the person responsible for the public nuisance by indictment. The same course may be adopted in almost all cases of nuisance, unless a statute expressly forbids such a course or creates a new offence. But it will in the majority of cases be found far more convenient to adopt the procedure which is appointed by any statute dealing with the particular nuisance. In regard to minor nuisances a summary method of procedure before justices at Petty Sessions at the instance of the local sanitary authority is almost invariably provided.

NUISANCE IN SCOTS LAW

As has been seen, nuisances are, in England, of two kinds—public and private—the former of these being punishable by fine and the removal of the offensive object, the latter, by civil action at the instance of the person aggrieved. In Scotland, however, there is no such recognized distinction between public and private nuisances. Whatever obstructs passage along the public highway; whatever is intolerably offensive to private individuals or their dwelling houses, whether by stench, noise, or indecency; in short, whatever causes material discomfort and annoyance for the ordinary purposes of life to a man's house or to his property; is, in the law of Scotland, a nuisance. But, in theory at any rate, a person has an absolute right to use his property as he thinks fit, and this right will not be limited merely because he causes inconvenience to his neighbours. To create a nuisance there must be positive discomfort or danger caused by the thing or operation complained of. And circumstances have always great weight in determining whether an operation is, or is not, a nuisance. Thus it makes a great difference in determining whether an operation complained of is a nuisance if the works constituting the alleged nuisance are established in a populous neighbourhood or in a place sparsely or not at all inhabited, or in a part of a town where similar works already exist, or in a situation where less cause of offence is required to make life uncomfortable. And whether the person comes to the nuisance or the nuisance to the person the rights of the respective parties are the same. Statutory nuisances have been created by recent legislation, such as the Public Health Acts, the Smoke Nuisance Act, the Alkali Act, the Factory and Workshop Act, and by the General (and local) Police Acts. Practically all the public nuisances known to English law are declared to be statutory contraventions by the General Police Acts, the provisions of which are adopted by the various towns and burghs of Scotland. Large cities, like Edinburgh and Glasgow, have Police Acts of their own.

[Authority.—*Garrett* on "Nuisances."]

CHAPTER XXV

ARBITRATION

Introductory—Submission to Arbitration by Consent out of Court—References under Order of Court—The Arbitrator—The Proceedings—The Award—Law of Scotland.

INTRODUCTORY

The settlement of disputes by arbitration has become very common in commerce. It has its advantages and disadvantages. The advantages consist mainly in the fact that the delays of the law are obviated—the parties can choose their own time and have a speedy trial; the trial is conducted in private, avoiding the publicity of the Courts and the disturbing element that such publicity sometimes produces in the minds of the witnesses. Perhaps the greatest advantage in the opinion of many business men lies in the fact that the arbitrator agreed upon has expert knowledge of the subject-matter in dispute, and is in a position fully to understand the technical evidence put before him. Its disadvantages may be seen chiefly in the absence of an experienced judge to keep a firm control of the proceedings, whose legal knowledge is of the greatest assistance in the conduct of disputes of any magnitude. Arbitration as a rule tends to be more expensive than trial by action, partly owing to the fact that the proceedings are more drawn out.

Arbitration as a means of settlement of disputes has been recognized for some centuries by the common law, and is now governed by the Arbitration Act, 1889, except as to agreements to refer not in writing, which are still subject merely to the common law.

SUBMISSION TO ARBITRATION BY CONSENT OUT OF COURT

For the purposes of the Arbitration Act, a submission is an agreement *in writing* to refer a dispute or disputes to some third person or persons for settlement, signed by the parties to the agreement. A submission need not be in writing, but business men nowadays are not likely to submit their differences to arbitration under a verbal agreement. Apart from the fact that the Arbitration Act has no application, there is the further objection that in case of disputes the agreement would be difficult to prove, and if the dispute concerned land an award on such dispute could not be enforced by reason of the Statute of Frauds. (See Chapter I of this Part.)

The submission may be to refer an existing dispute or future disputes which may arise between the parties. The latter form of agreement is very common. Most contracts of insurance, and contracts for building and construction works of any magnitude, for the sale of produce, and many other classes of commercial contract, contain a clause to submit all future disputes arising under such contracts. The clause is also commonly found in deeds of partnership. Such clauses are usually very general in their terms so as to include every conceivable dispute that might arise, including the legal construction of the contract; nevertheless it is often a difficult question to determine whether the dispute that has arisen is one which was contemplated by the clause, and if not, the arbitrator would have no power to decide it except by the agreement of the parties. A

submission must be distinguished from an agreement to value, to which the law of arbitration would not apply.

A party who has agreed to submit a dispute to arbitration may, at any time before the arbitrator is appointed, refuse to arbitrate in accordance with his agreement. Such a refusal constitutes, of course, a breach of contract in respect of which he would be liable to an action. (See Chapter I of this Part.) But once the arbitrator is appointed, the submission is irrevocable except by leave of the Court. It is not usual to apply to the Court for such leave, but the Court has granted it where the arbitrator has been shown to be guilty of bias, or is himself interested in the subject-matter of the dispute, or has admitted evidence which he had no right to admit.

The Statute now provides that a submission in writing shall have the same effect in all respects as an Order of Court.

An agreement to submit disputes to arbitration does not in itself take away the right to commence legal proceedings. But if any party to a submission brings an action in respect of any matter agreed to be referred against any other party to the submission, the latter may apply to the Court to stay the proceedings. Such application must be made by a party before he takes any step in the action, e.g. before he delivers his defence or applies for security for costs, otherwise the application will be too late. The Court is not bound, however, to stay the proceedings; but the power being discretionary, as a rule the Court will do so and keep the parties to their agreement, unless good cause to the contrary is shown by the person who desires to escape the consequences of his agreement. The application to stay proceedings is refused where fraud is charged and the person so charged desires a public investigation; it is also refused where the party bringing the action alleges and proves that the arbitrator is unfit or biased, and that he ought not by reason thereof to be compelled to go to arbitration. This is a difficult case to make out, as the Court is slow to believe, except on the strongest evidence, that a named arbitrator will not act honestly and judicially. It has become usual for Municipal Corporations to insert a clause in their contracts to the effect that their own engineer or architect shall be the arbitrator; the result is that if an architect has refused to pass the builder's work, he is to be arbitrator to decide whether he was right in thus refusing. Such a clause seems unfair, but the stress of competition compels its acceptance, and the Court has held that such a clause is good. It was decided in *Eckersley v. Mersey Dock and Harbour Board* (1894) that the rule which applies to a judge or other person holding judicial office, namely, that he ought not to hear cases in which he might be suspected of bias in favour of one of the parties, does not apply to an arbitrator named in a contract to whom both the parties have agreed to refer disputes which may arise between them under it. If it is essential to cross-examine the architect himself, the Court would probably refuse to stay the action.

The subject-matter of the action must be the matter agreed to be referred, otherwise the question of staying proceedings does not arise. If the action includes matters agreed to be submitted, and matters not within the submission at all, the Court may stay proceedings as to part and allow the action as to the rest to proceed.

The application to stay proceedings is made by a summons in the action, supported by an affidavit of the applicant that he was at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration.

A submission to arbitration, in addition to being a good ground for applying to stay an action in respect of matters included in the submission, may also constitute a complete defence to the action. Such a defence arises when the submission provides that arbitration and an award thereon shall be a *condition precedent* to a right of action. Such a clause is commonly inserted in insurance policies, as insurance companies naturally dislike publicity where a claim is disputed, even though the objection to pay is well merited. The clause would usually run as follows: "And the company shall not be liable in respect of any claims for any loss or damage or for any act, neglect, or default in the exercise of any of the powers and authorities given to it by the policy or otherwise, unless and until the liability of the Company and the amount of its liabity in respect of the claim shall, if not admitted, have been referred to and determined by such arbitrator, whose award thereon shall be a condition precedent to any liability of the Company or any right of action against the Company in respect of such claim"—*Trainor v. Phœnix Fire Assurance Company* (1872).

Form of Submission in a Building or Construction Contract

"All disputes and differences of every kind which may arise between the Contractors and the Corporation during the progress or after the completion of the works contracted for, in relation to or arising out of any of the plans or draw-

ings, or any of the provisions of the specification or contract, or in relation to any of the works, or the payment to be made for the same, or as to the accounts between the Corporation and the Contractors, shall be and the same are hereby referred to the Engineer of the Corporation as sole arbitrator, with power to make awards from time to time as he may think proper, and with power to make such orders in any such award as to costs and charges of and attending any such reference and of the award as the said engineer shall in his discretion think proper, and every award of the engineer shall be finally binding and conclusive upon the parties in relation to the disputes and differences as to which such award is made, and shall not be disputed on any ground whatever."

A submission, when not a clause of a contract sufficiently stamped, should be stamped with a 6*d.* stamp if the subject-matter of dispute exceeds £5, if the submission is merely in writing; if by deed, the stamp must be 10*s.*

REFERENCES UNDER ORDER OF COURT

It frequently happens in the course of an action that it is convenient to have an enquiry made out of Court, where the making of such enquiry would seriously interfere with the work of the Court, e.g. where the enquiry has to be made piecemeal. So the taking of complicated accounts is very inconvenient in Court where such accounts are only an incident in the action. A judge has power to refer any question *for enquiry or report* to any official or special referee; the judge must use discretion before he makes such an order, and where a party has a right to trial by jury the order should not be made. The Court is not bound to adopt the report when made; it may vary it or reject it altogether. If the Court adopts the report, it may be enforced as a judgment or order to the same effect. The Court may also refer *for trial* the whole action or any question arising therein to be tried before a special referee or arbitrator agreed upon, or before an official referee of the Court. The Court may so refer for trial (*a*) if all the parties consent; (*b*) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court be made before a jury or conducted by the Court through its other ordinary officers; (*c*) if the question in dispute consists wholly or in part of matters of accounts. If a special referee or arbitrator is appointed, it can only be done by agreement of the parties.

In the first case the judge merely orders the referee to *report* to him, and he subsequently considers such report. In the second case, he orders the referee to *try* the matter.

The arbitrators or referees, whether special or official, to whom matters are referred for trial by the Court are deemed to be officers of the Court, and must conduct the reference in accordance with prescribed Rules of Court. The report or award is equivalent to the verdict of a jury, and, unless the order of reference otherwise directs, the arbitrator has power to direct judgment to be entered, and after the trial of the action referred to him he is bound to order judgment to be entered up.

The Court has, as to references under order of the Court, all the powers given by the Arbitration Act in respect of references by consent out of Court.

THE ARBITRATOR

The submission to arbitration frequently names the arbitrator, or indicates the person deputed to nominate the arbitrator, e.g. the president of the Royal Institute of British Architects. The reference is usually to one arbitrator, or two arbitrators with power to select an umpire. If no other mode of reference is provided, the reference is to a single arbitrator. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

Power is given to the Court by the Arbitration Act to appoint an arbitrator, umpire, or third arbitrator in the following cases:—(*a*) Where a submission provides that the reference shall be to a single arbitrator (or if no other mode of reference is provided) and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator. (*b*) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy. (*c*) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him. (*d*) Where an

appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy.

The Court cannot appoint except in these cases. For example, if two parties are to name each their own arbitrator, with liberty to appoint a third arbitrator, and one of the parties refuses to name his arbitrator, the Court has no power to fill the vacancy, as the case does not come within (*a*) or (*c*) above-mentioned. If, however, such person were to bring an action, the Court would probably stay it.

The Court has no power to compel a party to name its arbitrator; its power is to appoint in a proper case.

Before applying for the assistance of the Court, the complaining party must serve the other parties or arbitrators, as the case may be, with a *written* notice to appoint an arbitrator, umpire, or third arbitrator. If the appointment is not made within seven clear days after the service of the notice, then application may be made to the Court, and it is the Court's duty to make the appointment, unless there is some good reason shown to the contrary. Care must be taken to give a proper notice.

The parties themselves have power to supply a vacancy where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party:—(*a*) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place. (*b*) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution (as mentioned above), for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award is binding upon both parties as if he had been appointed by consent.

The above powers can be exercised where the submission provides for the appointment of two arbitrators and an umpire, but not where the provision is for the appointment of three arbitrators.

In the case of an application to the Court to appoint, the applicant who has given a bad notice is put right by the Court refusing the application; but where the party himself purports to fill up the vacancy and proceeds to arbitrate before the sole arbitrator, the other party, if he refuses to attend the proceedings, may nevertheless, when an attempt is made to enforce the award, take the objection that the notice was bad; if the objection is sound, the whole proceedings are abortive at the cost of the party who gave the notice. If the other party attends the arbitration, he waives the irregularity.

The following is a sufficient notice:—

"Take notice that I have appointed Mr. John Jones, of 1001 Lombard Street, E.C., to act as one of the two arbitrators under the submission to refer to arbitration dated the 1st January, 1911. And I call upon you to appoint an arbitrator within seven clear days from the service of this notice upon you. If you fail to appoint an arbitrator within the time named, I shall appoint Mr. John Jones to act as sole arbitrator.

"Yours faithfully,

"JAMES ROBERTS."

When the seven clear days have elapsed and no appointment has been made, the party should send a second notice to the effect that in accordance with the first notice the arbitrator therein named has been appointed sole arbitrator. The seven clear days commence to run from the date that the notice should be received in the ordinary course of post.

The Court may set aside any appointment made by a party in pursuance of the powers just described, but will not readily do so. If a party nominated his own servant to be one of the two arbitrators and then subsequently appointed him as sole arbitrator, no doubt the Court would set aside the appointment as being manifestly unfair.

The Court has power to remove any arbitrator or umpire who has misconducted himself; the same misconduct would be grounds for setting the award aside. Thus an umpire who had purchased from one of the parties the amount sought to be recovered in the arbitration was removed for misconduct. In the arbitration of *Enoch and Zaretzky Bock & Co.* (1909) the umpire was removed because he insisted upon calling a witness without the consent of the parties. It is improper to accept hospitality from one of the parties, although the Court would not remove such an arbitrator unless it appeared that there was an attempt to corrupt him, or that he had been influenced. Above all things, an arbitrator should not show bias or partiality. Such conduct is in danger of being attacked both before and after the award. There is a very common error where the submission provides for the appointment of an arbitrator by each party, the arbitrators to appoint an umpire, that each party may appoint his own agent as arbitrator to act as a species of counsel to protect his interests and advocate his

case before the umpire. Such a course is most imprudent. The arbitrators must act as judges without any consideration whatsoever of the question to whom they owe their appointment, and where the agent or servant of a party is appointed by him, a doubt is at once thrown upon the validity of the whole proceedings. It is otherwise where the arbitrator is named in the submission, for there the parties have contracted beforehand and cannot complain that the named arbitrator is an agent of one of the parties or otherwise interested. In any case, it is always possible to waive any objection that might have been taken on the ground of the interest of the arbitrator in the proceedings.

It is improper for an arbitrator to make an inspection of the subject-matter of dispute, e.g. a house, in the presence of one of the parties without the knowledge of the other party; or to demand payment of fees as arbitrator as a condition to stating a case on a point of law to the Court; but any case of misconduct must be well established before the Court will remove an arbitrator, the judge chosen by the parties.

The umpire is the umpire between the parties and not between the arbitrators. A third arbitrator is not the same as an umpire; he is co-equal with the other two arbitrators, and the submission usually provides that the award of two of the arbitrators shall prevail. Two of the arbitrators must not proceed to arbitrate without giving notice to the third, nor may they draw up their award without consulting him; he must have an opportunity of definitely agreeing or disagreeing with the proposed award of his brother arbitrators. Thus, if two arbitrators send a draft award to a third for his approval, and he sends it back with certain drastic alterations, the two are not entitled to draw up the award on the assumption that he has refused to sign it.

Remuneration of Arbitrators

Where the reference is by order of the Court, the Court fixes the remuneration of the referee or arbitrator. The arbitrator names his fee, which is taxed by a taxing master (see Chapter XXVI of this Part), and a reasonable fee allowed. If the fee is not paid by the party ordered to pay it, the arbitrator may bring his action to recover it. In arbitrations out of Court by consent of the parties, the fee of the arbitrator is often fixed by arrangement with the arbitrator and the parties beforehand; if not, he is entitled to charge a reasonable fee. A fair fee for a professional man in an arbitration of magnitude is £15 to £25 per day. The arbitrator is also entitled to charge his costs for legal assistance in drawing up the award and other respects. The arbitrator, if he is at all doubtful of the solvency of either of the parties, should take the precaution to have an undertaking from the solicitors of the parties before commencing the arbitration that his costs and fees will be paid, or some other guarantee to the same effect. In any case, he should refuse to hand over his award until his costs and fees have been paid, for once the contents of the award are known, he might have difficulty in obtaining payment except by means of bringing an action, a remedy which is always open to him. It is quite usual for the parties to agree each to pay half the fees, for the purpose of taking up the award irrespective of the question upon whom the ultimate liability is to fall as adjudged in the award. If the arbitrator's fees have not been agreed, and he seeks to charge an exorbitant fee, the party who is compelled to pay it in order to get the award may subsequently bring an action to recover so much of the fee paid as the Court may deem to have been unreasonably charged. Although a fee may be reasonable as between the arbitrator and the parties, or may have been paid by agreement in order to get the award, it by no means follows that the party who is finally liable to pay the costs under the award will be compelled to pay such fee as between party and party. The costs of the arbitration are taxed, and the taxing master will only charge against the party ordered to pay costs such fee for the arbitrator as in his opinion is reasonable.

THE PROCEEDINGS

As a rule, the submission provides for the time within which the award should be made. If no time is mentioned in the submission, the arbitrator must make his award within three months after entering upon the reference (i.e. after he has called the first meeting of the parties), or after having been called on to act by notice in writing from any party to the submission. The arbitrator may enlarge the time for making his award from time to time by writing signed by him; if the proceedings are being protracted to greater length than was expected, the parties should take the precaution to apply to the arbitrator to enlarge the time. It is possible for the parties to consent to the time being enlarged; their consent should be in writing signed by them, although it is not abso-

lutely necessary. The Court has power to enlarge the time, whether the time for making the award has passed or not, on application supported by an affidavit showing good cause; if there has been unnecessary and prolonged delay, the Court may refuse the application. The Arbitration Act further provides that in the absence of anything in the submission to the contrary, the umpire must make his award within one month after the original or extended time appointed for making the award by the arbitrators has expired, or on or before any later day to which the umpire by writing signed by him may from time to time enlarge the time for making his award.

In the case of references under Order of Court, the course of proceedings requires little comment. The reference proceeds subject to Rules of Court, and differs little, if at all, from an action. The referees appointed are usually the Official Referees, who have much the same experience as a judge, with practically the same authority. (See Chapter XXVI of this Part.)

In the case of references by consent out of Court, the arbitrators are usually lay arbitrators, but the proceedings are or should be carried on much as an action in Court. The arbitrator regulates the course of the proceedings. It is for him to fix the times for meetings, and notice must be given to all concerned. It is usual to suit the convenience of all parties, but the arbitrator is not bound to postpone or alter the date of the meetings; the majority of arbitrators can fix the time. It is convenient to have a preliminary meeting to discuss procedure and to arrange for discovery of documents and other details. The parties may be represented by their solicitors and counsel. If necessary, the arbitrator orders points of claim and defence to be delivered by the respective parties in order that the matters at issue may be well defined. He may allow such pleadings to be amended, but he is entitled to use a judicial discretion and refuse any amendment; indeed, such refusal would be reasonable if the arbitration had proceeded to any extent, for it is not always equitable to allow a party, after he is defeated on the issue which he originally defined, to turn round and demand the right to present an entirely different case. He has power to compel the attendance of witnesses in any part of the United Kingdom, on subpœnas issued by the Court in aid of the arbitration. So a prisoner may be brought up as a witness. It must be remembered that a submission being now an order of Court, the parties may be committed for contempt of Court for not obeying the arbitrators' orders, e.g. an order to produce documents. The witnesses give their evidence and are cross-examined as in a Court of Justice. It is the duty of the arbitrator to take a note of the evidence and to decide any question as to the admissibility of evidence as it arises. Such questions no doubt cause the arbitrator considerable difficulty, but he is always entitled to have the services of a legal adviser to sit with him. If the arbitrator intimates his intention to accept evidence which a party considers to be clearly inadmissible, such party can resort to one of two methods of testing the point which should be a point of substance, for whichever method is resorted to, it will mean considerable delay and expense, so that in the majority of cases it is better to leave the objection alone; but sometimes the question of admissibility of certain evidence is of the utmost materiality. The party objecting may either (1) ask the arbitrator to state a case for the opinion of the Court, which is the more usual course, or (2) apply to the Court to revoke the authority of the arbitrator on the ground that he insists upon receiving inadmissible evidence. The arbitrator has power to administer oaths or to take the affirmation of the parties and witnesses appearing before him, and any person who wilfully and corruptly gives false evidence is guilty of perjury as if the evidence had been given in open Court. But there is no jurisdiction in the Court or the arbitrator to order a commission to examine witnesses abroad; this can only be done by consent of the parties. The arbitrator may view the premises, &c., with which the arbitration is concerned; the usual course is for the solicitors on both sides to attend. The arbitrator may call in skilled scientific persons to assist him in scientific matters. He must not delegate his position to them, but he can receive their opinion submitted to him and adopt it as his own after using his own judgment in the matter; in other words, the decision on the particular point must be his and not that of the experts he has called in, just as the judge in the Admiralty Court uses the advice of the Trinity Brethren who sit with him. The assistance of experts must be distinguished from the calling of a witness without the consent of the parties, for that an arbitrator cannot do. It is the duty of an arbitrator to give notice of the close of the proceedings, so as to give the parties full opportunity of adducing all their evidence. The arbitrator may reopen the proceedings after they are closed, before he has made his award, in order to receive fresh evidence, the reception of which will enable him to do full justice between the parties.

If one of the parties refuses to attend before the arbitrator he has power to proceed *ex parte*. An *ex-parte* arbitration is naturally very undesirable, and if an arbitrator decides to proceed in

such manner, he must be careful to inform the other party of his intention. A clear notice should be sent that, unless the party appears on the day named, the arbitration will proceed in his absence; even then, if the party gives a good reason for his non-attendance, the arbitrator would do well not to take the high-handed course of proceeding *ex parte*.

Any arbitrator or umpire may, at any stage of the proceedings prior to the making of the award, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. Any clear and *bona-fide* request to state a case should be acceded to by the arbitrator; but if he is convinced that the request is only for the purposes of delay, he may refuse to do so. The party may then apply to the Court to compel the arbitrator to state a case. If the arbitrator has refused to adjourn the arbitration in order to enable a party to apply to the Court to compel him to state a case, and makes his award, that is misconduct, and the award may be remitted with an order to state a case. The decision of the Court upon any case stated is not in the nature of a judgment or order, but rather an expression of opinion to guide the arbitrator, and consequently there is no appeal. If the point of law is an important one which the parties feel ought to be carried to a higher Court, then they should request the arbitrator to state the award in the form of a special case. In this case an appeal would lie to the Court of Appeal and thence to the House of Lords. Where a case is stated prior to the making of the award, the Court has no power to deal with the costs of the application to the Court unless the order referring the point to the Court so provides.

THE AWARD

The arbitrator, having closed the proceedings, should within the time permitted him make his award. The arbitrator cannot be compelled to make an award, nor is he liable to an action for failing to do so, unless he has expressly so contracted, in which case he would be liable to an action for breach of contract. An arbitrator is not liable to an action for negligence in connection with his duties as an arbitrator; he is liable, however, for fraud and collusion.

The award must be in writing, but need not be by deed, unless the submission expressly so provides. It should be signed by the arbitrator or arbitrators or majority of them or umpire, as the case may be. The signatures should be duly attested by a witness. The award must be one award. The proceedings would be vitiated if two awards were signed and delivered in respect of distinct matters arising in the same reference, unless the submission so provided. The award must be duly stamped.

When the award is ready the arbitrator gives notice to the parties and delivers it up to whichever party is prepared to pay his fees. Where there is a serious question of law to be decided, the arbitrator, at the request of the parties, may draw up his award and then state the whole or part of it in the form of a special case for the opinion of the Court. His duties then come to an end, and the matter is settled by the Court. For example, he may state in his award that if the Court considers that certain specified evidence as to damage is admissible, then he awards the sum of £1000; but if not, he only awards £750. The Court decides the point of law, and the award stands accordingly.

The lay arbitrator should not attempt to draw up an award of importance without legal assistance. The award should commence with a recital of the authority of the arbitrator and of the issues upon which he has been requested to arbitrate; if the issues have been reduced to writing, it would be well to recite them verbatim. The arbitrator has power under the Arbitration Act to correct any clerical mistakes or errors arising from any accidental slip or omission. In other respects his award is final, and he cannot alter it once it is executed. Having stated the issues, the arbitrator should proceed to state his decision on each issue, taking care to omit none, e.g. "I award as follows (*a*) that A. B. has not committed a breach of the said contract (*b*) that he is entitled to commission at the rate of 10 per cent (*c*) that there is due to him in respect of such commission £1000, &c. &c.". It is very material that the award should expressly deal with every point submitted to the arbitrator, otherwise the whole award may be held to be void. An award is often faulty because the arbitrator seeks to award in excess of his powers. To determine his jurisdiction, he must look at the submission to refer or the definite issues subsequently submitted by the parties to him in pursuance of such submission, and he should not attempt to decide more than is there submitted to him. If there is any doubt, the arbitrator may be called as a witness in the proceedings, to set aside his award to state the jurisdiction he in fact assumed. Moreover, a party will not be allowed to set the award aside in bad faith; for example, if both parties during the course of the arbitration definitely raised a fresh point for the consideration

of the arbitrator which in fact was not within the terms of the submission and which the arbitrator eventually decided, his award would not be set aside for excess of jurisdiction either on the ground that it would be bad faith to seek to do so or because the facts would amount to a parol submission. The award should then go on to give directions in so far as may be necessary. Here again an arbitrator must not exceed his power. The submission is generally his best guide, although in many cases he has an implied power to give directions. For example, if the issue is as to indebtedness, he can direct payment. If the submission is in respect of all disputes that may arise in connection with a partnership, he may direct a dissolution of the partnership. If the direction is clearly in excess of his jurisdiction, the award will be void as to whole or part.

The award must be certain; for example, an award which gave the successful party the *reasonable* expenses incurred in the performance of a certain act would be void; it would be otherwise if the amount named was fixed, although it might have to be ascertained from some known source, as, for example, if the award gave the expenses *actually incurred* in the performance of a certain act without naming the sum.

An award must decide between all the parties to the reference. It must not order an impossibility or anything to be done which is illegal.

When an award is bad in part for any of the reasons dealt with above, it does not necessarily follow that the award is void. If the bad is entirely distinct from the good, the award is only void to that extent. But in practice the real difficulty in any particular case is to determine how far the bad part may have affected the mind of the arbitrator in deciding that part of his award which is apparently good. If the two cannot fairly be separated, the whole award is void.

The arbitrator should not state in his award the reasons for his findings. Even though his reasons be right, there is great danger that he may express them wrongly or ambiguously, whereby an occasion is at once given for the unsuccessful party to move to set aside the award. If the law is difficult, it can be brought before the Court in the manner already explained; in other respects arbitration is intended to put an end to the disputes between the parties, and it is to be regretted that arbitrators will from time to time give an opportunity for proceedings to be reopened because they imprudently insist upon stating their reasons, which may be unsound as legal propositions. Where the submission does not provide as to costs, the costs of the reference and award are in the discretion of the arbitrator or umpire. If the arbitrator settles or taxes the amount of his own fees and costs of the award and makes the sum thus payable a part of the award itself, the unsuccessful party cannot tax the amount against the successful party; but if the charges are exorbitant, he can move to set aside the award on the ground of misconduct. The arbitrator can provide for a lump sum to be paid for costs by one party to the other, and in small arbitrations this is a fair provision which in the end saves expense. But in heavy arbitrations, where the costs are likely to be large and complicated, it is more usual and better to direct to and by whom the costs are to be paid, the same to be taxed as between party and party by the taxing masters of the Court. Although the arbitrator has complete discretion over the costs, he usually follows the practice of the Court by making the unsuccessful party pay the costs of the successful party; but he is not bound to do so, and where a party by the award recovers a much less sum than originally claimed, an arbitrator is justified in directing that each party should pay his own costs. In some cases he would be justified in making the successful party pay the costs of the arbitration.

Where a reference is under the order of the Court, either by consent or compulsorily, the Court has power to direct in the Order itself the terms as to costs. If no mention is made as to costs, the official referee or arbitrator has by Rules of Court full power to deal with the costs both of the reference and the action; if the referee makes no order as to costs, the costs abide the event. In the case of an action on contract, if the plaintiff does not recover more than £100, the costs are only allowed him on the County Court Scale, unless the judge otherwise orders. (See Chapter XXVI of this Part.) If an action founded on contract is referred to an Official Referee, and the plaintiff only recovers £50, the official referee may allow costs on the High Court Scale so far as the reference is concerned, for that does not come within the Rule; but so far as the costs of the action are concerned, he has no power to certify costs on the High Court Scale, for that power belongs only to a judge. The plaintiff must apply to the judge for such costs of the action to be paid on the High Court Scale.

Method of Enforcing the Award

An award on a submission may by leave of the Court or a judge be enforced in the same manner as a judgment or order to the same effect. There is no power to order judgment to be entered in accordance with the award, but only to enforce it as a judgment, i.e. by issuing execution. To

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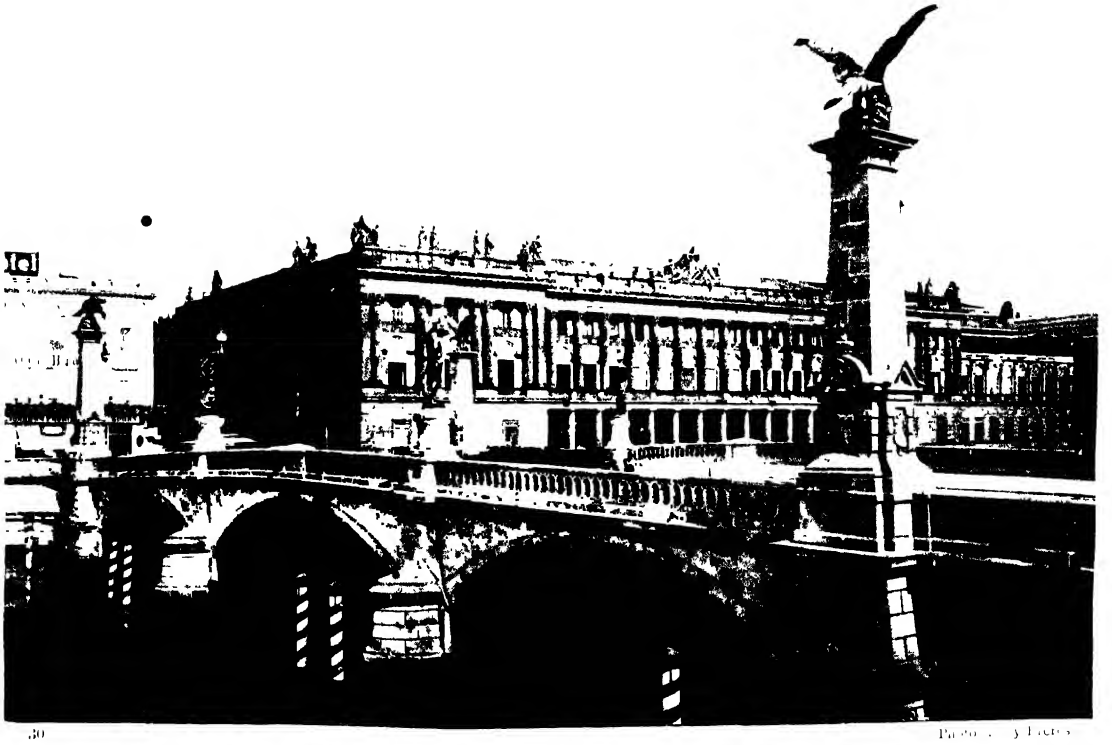

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obtain leave, the application must be made by an originating summons. (See Chapter XXVI of this Part.) The Court is not bound to grant leave, and would not do so where the award was obviously invalid. The respondent to the summons should be asked to pay the costs of the application, and in the general case would be ordered to do so. But if the application was entirely unnecessary, the Court would probably not decree costs against him.

The successful party may commence an action to obtain a judgment on the award. Where the only object is to obtain execution it would, of course, be unnecessary in most cases. But it would be necessary if the Court refused to give leave to enforce the award, on the ground that it was apparently invalid. If the submission was not in writing the Arbitration Act would not apply at all, and an action would be the only remedy. Moreover, in an action interest can be recovered from the date of demand for payment. The defendant in such an action can impeach the validity of the award by pleading that the award was in fact not made, or not duly executed, or that the arbitrator exceeded his powers; but he cannot plead the misconduct of the arbitrator, for that is a ground for setting the award aside, and until it is set aside it is good.

It is also necessary to bring an action when specific performance of the award is required, for that cannot be enforced as a judgment. For example, if the arbitrator awards that one party shall execute a conveyance of land to the other party, an action could be brought to compel the conveyance. In such proceedings the Court would consider the case in accordance with its settled principles, and would order or refuse specific performance according to circumstances.

In the case of references under the Order of Court, the official referee has power and is bound to enter judgment where the action is referred to him for trial; this is subject to the order of the judge directing the reference.

An award may occasionally be enforced by attachment of the person for contempt of Court, but obtaining leave to enforce the award is much more expeditious and likely to be effective.

Power to Remit the Award

The Court may from time to time remit the matters referred or any of them to the reconsideration of the arbitrators or umpire. Where an award is remitted, the arbitrators or umpire must, unless the order otherwise directs, make their award within three months after the date of the order. Apart from errors appearing on the face of the award, and misconduct and similar matters, an award is final and binding on the parties, subject to the power of the Court to remit. The application is made to a Divisional Court of the King's Bench Division, in reasonable time, unless the delay is satisfactorily explained. The arbitrator himself may ask to have the award remitted to him on the ground that by a mistake he failed to deal with some matter. Other grounds which justify an application are: the unreasonable refusal of the arbitrator to state a case on a point of law; the discovery, after the award has been drawn up, of material evidence; an excess of jurisdiction on the part of the arbitrator. Some of these grounds equally justify a motion to set aside the award, but it may be more convenient to seek to have the award remitted for further consideration rather than to set it aside.

The award is generally remitted back to the same arbitrator, unless he has been guilty of misconduct. The costs are in the discretion of the Court, who may order the arbitrator to deal with the costs of the remitted reference and the motion to the Court to remit. The powers of the arbitrator are restored; he may hear fresh evidence if the case demands it. If the award is remitted by reason of the fact that one part only is void, he can only deal with that part. Where a matter is referred by Order of Court, any party may appeal from the judgment of the arbitrator or official referee on the ground that upon the finding as entered the judgment is wrong; and on the application of the party the Court may remit all or any part of the matter in dispute to the arbitrator or official referee. An appeal lies to the Court of Appeal.

The official referee or arbitrator may, before the conclusion of the trial before him or by his report under the reference made to him, submit any question for the decision of the Court, or state any facts specially with power to the Court to draw inferences, and in any such case the order to be made on such submission or statement must be entered as the Court may direct; and the Court has power to require any explanation or reasons from the referee, and to remit the cause or matter or any part for re-trial or further consideration to the same or any other referee. The unsuccessful party before judgment entered may apply to have the report set aside and the action remitted.

Setting Aside the Award

The unsuccessful party may, in proper circumstances, move to set aside the award. The cases in which the Court will set aside an award have been indirectly referred to above. The Court has

power to set aside an award on the ground of the arbitrator's misconduct, e.g. if he has a secret interest in the dispute, if he shows bias, if he has allowed himself to be influenced by the hospitality of one of the parties, if he has inspected the subject-matter of dispute in the presence of one of the parties without the knowledge of the other, if he has called a witness without the consent of the parties, if the proceedings have been irregular by reason of notice of a meeting not being given to one of the parties, if he has closed the proceedings before hearing all the evidence, if he has unreasonably refused to state a case upon a serious point of law, if the umpire refuses to hear further evidence than that which has been previously submitted to the arbitrators, if he allows himself to be corrupted by one of the parties, and the like. In most cases misconduct on the part of an arbitrator may be waived by the party proceeding with the arbitration after knowledge and without protest. The Court would certainly not set aside an award if the misconduct was not serious and the amount at stake only small.

An award upon a reference by consent out of Court cannot be set aside on the ground of mistake by the arbitrator, whether of fact or of law, unless such mistake appears on the face of the award or some document which accompanies it. The arbitrator who has made a mistake of fact may himself ask the Court to remit the award to him for the purpose of correction; but if he himself does not admit the mistake, and the award on its face does not show it, the award cannot be set aside. The same principle applies to mistakes of law; hence the rule that the arbitrator should not give reasons. If the arbitrator has exceeded his jurisdiction, it is generally apparent on the face of the award, and there would be no difficulty in getting it set aside. Sometimes it is possible, from the figures disclosed on the face of the award, to infer that the arbitrator has made a mistake, e.g. it the original claim was £1000, made up of several distinct items, and during the proceedings certain items to the value of £300 are abandoned, if the arbitrator awards £720, there must have been a mistake of fact. An award cannot be set aside on the ground that it is against the weight of evidence.

An award upon a reference under Order of the Court may be set aside by reason of mistakes of fact or law, or on the ground that it is against the weight of evidence, for the Court has power to set aside the award on any ground on which the Court might set aside the verdict of a jury.

An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties. The Court has power to enlarge the time on terms.

LAW OF SCOTLAND

The procedure upon an arbitration is for all material purposes the same as in England, save that the Arbitration Act, 1889, does not apply to Scotland. The Scotch Court has little power to intervene in arbitrations, which is the distinguishing mark in English arbitrations. Such power as the Court has is given by the Arbitration (Scotland) Act, 1894, which provides that a reference to an arbiter not named or to be named by another person as to a person merely described as the holder for the time being of an office is not invalid; the Courts may appoint an arbiter upon the failure of the parties to concur in the nomination of a single arbiter, or upon the failure of one party to nominate an arbiter; unless the agreement otherwise provides, the arbiters can name an oversman (umpire) in the event of their differing in opinion; if they cannot agree on an oversman, the Court may appoint. The decision of the oversman is final. By the Court is meant any Sheriff (i.e. County Court Judge) having jurisdiction or any Lord Ordinary of the Court of Session.

The decreet-arbitral or award is final, and its reduction is possible only on the ground of bribery, falsehood, or corruption to be alleged against the arbiters, or upon the ground of misconduct or excess of jurisdiction. The award can only be enforced by action.

AUTHORITIES.—*Russell*; and *Redman* on "Arbitration".

CHAPTER XXVI

ACTIONS AT LAW

Jurisdiction and Procedure of the High Court of Justice—The County Courts and their Procedure—Local Courts—Solicitor and Client—The Scottish Courts and their Procedure—Courts of Justice in Ireland.

In this chapter we give a brief account and explanation of the various legal proceedings in which a business man may become involved.

When seeking to enforce a claim by action, it must first be decided in which Court proceedings are to be commenced. For the present it will suffice to say that, generally speaking, if large sums or important matters are in dispute, the action will be commenced in the High Court of Justice; if the dispute is of minor importance, resort will be had to the County Court. Further, in some cases, when a cause of action arises in a particular locality, the jurisdiction of certain local Courts—such as the Duchy of Lancaster Chancery Court, the London Mayor's Court, the Salford Hundred Court of Record, or the Liverpool Court of Passage, with their peculiar forms of procedure—may be invoked.

JURISDICTION AND PROCEDURE OF THE HIGH COURT OF JUSTICE

The High Court of Justice was created by the Judicature Act, 1873, as one of two branches of the Supreme Court of Judicature, the other being the Court of Appeal. This latter Court was intended to be the final Court of Appeal, but subsequent legislation preserved the higher appellate jurisdiction of the House of Lords. Appeals from India and the Colonies are heard by the Judicial Committee of the Privy Council. The High Court of Justice succeeded to the jurisdiction of the Courts of Chancery, Queen's Bench, Exchequer, Common Pleas, Admiralty, Probate, Divorce and Matrimonial Causes, and Assize, together with that of various local courts.

The Court of Chancery had existed from an early period, and in course of time developed an extensive jurisdiction over matters which the common-law judges, bound by narrow precedents, refused to recognize or control. (See also Chapter XX of this Part.) The Court of Chancery, which professed to act as a court of conscience and to enforce moral duties, compelled parties to recognize equitable rights.

We owe to Chancery the remedies by way of "injunction", "specific performance", and "account". By its injunctions it not only protected purely equitable rights (e.g. injunctions restraining suitors from enforcing their inequitable but legal rights in other courts), but lent its aid to restrain the breach of legal duties. By decrees of "specific performance" parties were compelled to fulfil their contractual obligations, where the remedy for breach by way of damages, the sole relief at common law, was considered insufficient (e.g. to enforce completion of a contract for the sale of land). By an order for "accounts" it compelled persons in a position of trust to render an account of their dealings and pay over the sums found due to the persons entitled.

The Court of Queen's Bench, besides its criminal and civil jurisdiction, exercised control over inferior courts by means of the prerogative writs—which issued from the Queen's Bench as the special court of the Sovereign—of Mandamus, directing some inferior court or person to do some act appertaining to their office; Prohibition, commanding the judge or parties in an inferior court to stay proceedings in a matter beyond its juris-

diction; and Certiorari, commanding the judges of an inferior court to transfer a cause into the Queen's Bench.

The Court of Common Pleas had civil jurisdiction in all cases between subject and subject.

The Court of Exchequer was specially concerned with revenue cases, but also exercised jurisdiction in disputes between subject and subject.

The Court of Admiralty exercised jurisdiction in maritime affairs and disputes in connection therewith.

The Court of Probate was established by statute in the year 1857 to take over the jurisdiction of the ecclesiastical courts in granting Probate of Wills and Letters of Administration.

The Court of Divorce and Matrimonial Causes was also established in the same year to deal with divorce petitions and other matrimonial causes.

The main jurisdiction of the London Court of Bankruptcy was transferred to the High Court in 1883. (See Chapter XI of this Part.)

Divisions of the High Court

The High Court of Justice as at present constituted is made up of three divisions—the Chancery Division, the King's Bench Division, and the Probate, Divorce, and Admiralty Division—and has an unlimited jurisdiction in all legal disputes, save for a few exceptions (e.g. actions for recovery of land situate without the jurisdiction), if the defendant is within the jurisdiction at the time the writ commencing the proceedings is served upon him. Further, the Court may, in its discretion, give leave to serve a writ on a defendant out of the jurisdiction (i.e. beyond the borders of England and Wales) if—

1. The subject-matter of the action is land situate in England or Wales:

2. Any deed, will, or contract affecting land within the jurisdiction is sought to be construed, rectified, or enforced:

3. The defendant to be served abroad ordinarily resides within the jurisdiction:

4. The action is for the administration of the estate of a deceased person who was domiciled in England or Wales, or for the execution of any trust concerning property situate within the jurisdiction which ought to be executed according to English law:

5. The action is founded on a breach within the jurisdiction of a contract which ought to be performed in England or Wales (but not if the defendant lives in Scotland or Ireland):

6. An injunction is sought as to anything to be done, prevented, or removed within the jurisdiction:

7. A person residing abroad is a proper party to be joined as defendant with some person who has been duly served here:

8. The action is a probate action.

Though the amount of the claim does not affect the jurisdiction, it by no means follows that every cause of action should be litigated in the High Court; if it could originally have been commenced in the County Court, the successful plaintiff will, generally speaking, not be entitled to costs on the High Court scale unless he recovers in an action of contract £100 or upwards and in an action of tort £20 or upwards; and should he recover a sum of less than £20 or £10 respectively he will not be allowed any costs at all.

Though all the judges have co-ordinate powers, and an action may be commenced in any Division of the Court, certain business, either by Statute or Rules of Court, has been assigned to particular Divisions, and regard must be paid to this when commencing proceedings, as otherwise the cause may be transferred and the plaintiff mulcted in costs. The following is the business which has been specially assigned to:—

1. The Chancery Division,

All causes and matters for—

The administration of the estates of deceased persons. The dissolution of partnership or the taking of partnership or other accounts. The redemption or foreclosure of mortgages. The raising of portions or other charges on land. The sale and distribution of the proceeds of property subject to any lien or charge. The execution of trusts. The rectification, or setting aside, or cancellation of deeds or other written instruments. The specific performance of contracts between vendors and purchasers of real estate, including contracts for leases. The partition and sale of real estates. The wardship of infants and the care of infants' estates, and proceedings under various statutes, such as the Vendor and Purchaser Act, 1874, the Settled Land Acts, the Trustee Act, 1893, the Land Transfer Acts, and the Companies Act, 1908.

2. The work of the King's Bench Division comprises the—

Supervision of decisions of various inferior tribunals, both civil and criminal. Crown and Revenue cases. Bankruptcy proceedings. Common Law actions sounding in damages, e.g. breach of contract, libel, fraud.

3. The Probate, Divorce, and Admiralty Division deals with—

Probate actions. Petitions for divorce, nullity, judicial separation. Admiralty jurisdiction in actions concerning ships in respect of claims for collision, salvage, towage, mortgage, bottomry, &c. (See Part VI.)

An action is a civil proceeding commenced by writ or originating summons. Proceedings commenced by petition (e.g. divorce suits) or by motion (e.g. motion to set aside an arbitration award) are not technically actions. We shall first consider the proceedings in an action commenced by writ; the procedure by originating summons, which can only be used where authorized by Statute or Rules of Court, differs, and is discussed later.

The Parties to an Action

The party who claims relief in an action is called in England and Ireland the plaintiff, and in Scotland the pursuer; the party against whom relief is sought the defendant, and in Scotland the defender. There may be one or more plaintiffs and one or more defendants. All persons may be joined in one action as plaintiffs who assert any right arising out of the same transaction either jointly, severally, or in the alternative if some common question of law or fact is involved, but the defendant may apply to a Court or a judge if he wishes to object that the plaintiffs are improperly or inconveniently joined, and in a proper case separate trials may be ordered. If, owing to some mistake of law, an action is commenced in the name of the wrong plaintiff, or if there is some doubt as to whether he is the right plaintiff, the Court or a judge may grant leave to substitute or add another plaintiff or other plaintiffs subject to his or their consent in writing.

All persons may be joined as defendants against whom any cause of action is said to exist jointly, severally, or in the alternative if the claims arise out of the same transaction, as, for example, the acceptor, drawer, and endorser of a bill of exchange, but if there is a separate and distinct cause of action against each defendant, they must be sued separately. Trustees, executors, and administrators may sue or be sued without joining any of the beneficiaries, but the Court or a judge may order some or any of the beneficiaries to be added or substituted as plaintiff or defendant as the case may be, if they think it necessary. If there are numerous persons having the same interest in one cause or matter, one or more of them may sue or be sued on behalf of all, or may be authorized by a Court or judge to defend for the benefit of all. Misjoinder or nonjoinder of parties is not a fatal defect, though it may be a source of expense, and the Court or a judge has full power at any time to add necessary or strike out unnecessary parties, upon or without the application of either party.

Two or more persons carrying on business in partnership may sue or be sued in the firm's name if they carry on business within the jurisdiction. If they have a branch office in England or Wales it is sufficient for the purpose, but if they only carry on business without the jurisdiction they must both sue and be sued in their own names. One person carrying on business within the jurisdiction in a trade name may be sued in the trade name if he is domiciled here, but not otherwise. Infants may sue as plaintiffs by their next friends, and defend by their guardians appointed for the purpose (i.e. the "guardian *ad litem*").

Lunatics and persons of unsound mind sue by their committee or next friend, and defend by their committee or guardian *ad litem*.

Executors, administrators, trustees, &c., sue and are sued in their representative capacity.

Third Party Procedure

When a defendant claims to be entitled to contribution or indemnity over against any person not a party to the action, he may obtain leave from the Master to issue a notice to that effect. This procedure is only intended to be used where there is a clear right to the contribution or indemnity sought (e.g. between co-trustees in an action for breach of trust), so that all litigation may be concluded in the one action. The notice must state the nature and the grounds of the claim, and is sealed and served as a writ. The person served with the notice must enter an appearance in the action within eight days. If he does not he is deemed to admit the validity of any judgment which may be obtained against the defendant and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the notice. In such a case, if the defendant allows judgment to go by default, he may, after satisfaction thereof (or before, by leave of the Court), enter up judgment against the third party for the amount of the contribution or indemnity claimed. If the defendant defends the action and a verdict is given for the plaintiff, judgment may be entered up against the third party for the defendant, but no execution can be issued, unless by leave of the judge, until the defendant has satisfied the judgment obtained against him by the plaintiff. If the third party "appears", the defendant must apply for directions. On the hearing of the application the Master may, if satisfied that there is a question proper to be tried as to the liability of the third party, order the trial thereof at or after the trial of the original action, or, if not so satisfied, may enter up such judgment for the defendant against the third party as the nature of the case may require. If it appears desirable, the Master may give the third party leave to defend the original

action, and generally may give such directions as appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound by the judgment in the action. When a defendant claims to be entitled to contribution or indemnity against a co-defendant, the same procedure obtains, but no leave to issue the notice is required.

Interpleader

When a person is sued or expects to be sued by two or more parties (called the "claimants") for any debt, money, goods, or chattels in which he claims no interest other than for charges and costs (e.g. a tradesman sued or threatened to be sued by two or more persons for the return of goods sent to him for repair), he may take out a summons, returnable before a Master in Chambers, calling upon the claimants to state the nature and particulars of their claims. On the hearing of the application the applicant must be prepared to satisfy the Master by affidavit or otherwise that he claims no interest in the subject-matter in dispute other than for charges and costs, and that he is not in collusion with any of the claimants. If the claimants appear at the hearing of the summons the Master may, if he considers relief should be granted, stay any action that may have been commenced, and,

(1) With the consent of both claimants or on the request of any claimant, if having regard to the subject-matter it seems desirable, decide the merits of the claimants' rival claims at once; or

(2) Transfer the whole proceedings to the County Court; or

(3) Make one of the claimants the defendant in an action already commenced; or

(4) Direct that an issue (the facts in dispute as to their rival claims) between the claimants be stated and tried. In this case directions will be given as to place and time of trial, and as to which claimant shall be plaintiff and which defendant; or

(5) If the facts are not in dispute, he may decide a question of law or direct a special case to be stated for the opinion of the Court.

When a claim is made to any goods or chattels taken in execution by the sheriff under process of the Court, the person making the claim must do so in writing. On receipt of the claim the sheriff must give notice to the execution creditor, who must within four days give notice to the sheriff, according to the forms provided in the "Rules of Court", stating that he admits or disputes the claim. If the execution creditor admits the claimant's claim, the sheriff may withdraw from possession and apply to the Court for an order protecting him from any action in respect of the seizure and possession of the subject-matter of the claim, but he must give the claimant notice of his application, and the claimant may attend the hearing, and the Master may make all such orders as to costs as seem reasonable.

If the execution creditor does not admit the claimant's rights to the property and the claimant does not withdraw his claim, the sheriff may apply for an interpleader summons to be issued. On the hearing of the summons in a "Sheriff's Interpleader" the Master proceeds and has the like powers as in an ordinary case (the person claiming the property taken in execution and the execution creditor being the rival claimants), and in addition the master may order the property or any part thereof to be sold, and give directions as to the application of the proceeds.

Proceedings by or against Paupers

Any person may be admitted to sue or defend as a pauper on proof that he is not worth £25, his wearing apparel and the subject-matter of the action alone excepted. No person is permitted to sue as a pauper unless he has submitted his case to counsel and obtained a favourable opinion. Applications in the Chancery Division are made by petition supported by (1) an affidavit of the pauper, or his solicitor, stating that all the material facts of the case have been submitted to counsel; (2) an affidavit by the pauper that he is not worth £25, exclusive of his wearing apparel and the subject-matter of the action; (3) the case as submitted to counsel and his opinion that the pauper has reasonable grounds for commencing or carrying on the proceedings. In the King's Bench Division the formal petition is dispensed with, and application is made *ex parte* for the necessary order. In the Divorce Division application is made by petition addressed to the Court. The affidavit as to the means of the applicant must state his income (which must not exceed 30s. or 32s. per week). Leave may be obtained before or after commencing the proceedings.

In the Chancery and King's Bench Division (but not in the Divorce Division) the Court may, if necessary, assign counsel or solicitor, or both, to assist a person admitted to sue or defend as a pauper. In most cases the applicant himself obtains the consent of a solicitor to act on his behalf. A person admitted to sue or defend as a pauper does not pay any Court fees, and must not, in Chancery or King's Bench proceedings, pay any fee to counsel or solicitor on pain of being "dis-

paupered". In Divorce proceedings counsel and solicitors may be retained in the usual way, and be paid and accept fees for their services.

Joinder of Causes of Action

Several causes of action may be joined together on one writ against the same defendant or against defendants in the alternative (e.g. claims on two or more contracts against the alleged principal, or in the alternative for breach of warranty of authority against the agent; see Chapter II of this Part). Claims by or against husband and wife may be joined with claims by or against them separately, and claims by or against executors and administrators as such may be joined with claims by or against them personally arising in connection with the estate they are administering. Further, claims by plaintiffs jointly may be joined with claims by plaintiffs separately against the same defendant; save that except by leave no cause of action may be joined with an action for the recovery of land (other than a claim for rent or damages, &c., in respect of the land), and a trustee in bankruptcy suing as such cannot join any personal claim. In all cases the Court or a judge may, on the application of a defendant or otherwise, order separate trials, confine the action to certain claims, or grant other suitable relief, if all the causes of action cannot conveniently be tried together.

The Writ

A "Writ" is a summons in the name of the King commanding the defendant to enter an "appearance" in an action at the suit of the plaintiff within eight days (unless the writ is to be served abroad), failing which judgment may be given in his absence. It bears on its face—

1. The name of the Court and the division in which the action is commenced.
2. The name of the plaintiff.
3. The name and address of the defendant.
4. The date of issue.

It is tested in the name of the Lord Chancellor (or, if that office is vacant, the name of the Lord Chief Justice), and instructions for "appearance" and notes as to its currency are also given.

The "Writ" must be endorsed with a statement of the nature of the plaintiff's claim, and if the plaintiff sues or the defendant is sued in a representative capacity (e.g. as executor or trustee), this must also be stated. The address of the plaintiff, the name and address of his solicitor (if he has one), and an address for "service" follow. The address for "service", which is usually the office of the plaintiff's solicitor or the solicitor's London agent, must, if the writ be issued out of the Central Office of the Royal Courts in the Strand, be within three miles of that building; if the writ be issued out of a "District Registry", there must be an address for service within the district; and, if the defendant does not reside within that area, an additional address for service within the three-mile limit mentioned above. At the foot of the writ is the endorsement of service, which must be filled in by the process server within three days of the service.

Form 1.

(Face of Writ.)

In the High Court of Justice 1911,
W No. 613.
King's Bench Division.

Between James Wild Plaintiff
and
Robert Smith Defendant.

George the Fifth by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, To Robert Smith of 999 Tower Street, in the City of London. We command you, That within eight days after the Service of this Writ on you, inclusive of the day of such Service, you do cause an Appearance to be entered for you in an Action at the suit of James Wild. And take notice that in default of your so doing the Plaintiff may proceed therein, and Judgment may be given in your absence.

Witness, Robert Threshie, Earl Loreburn, Lord High Chancellor of Great Britain, the ..... day of ..... in the year of our Lord one thousand nine hundred and .....

N.B.—This Writ is to be served within Twelve Calendar Months from the date thereof, or, if renewed, within Six Calendar Months from the date of the last renewal, including the day of such date, and not afterwards. The Defendant may appear hereto by entering an Appearance, either personally or by Solicitor, at the Central Office, Royal Courts of Justice, London.

(Back of Writ.)

Statement of Claim.

The plaintiff's claim is for £98 due to the plaintiff for the price of goods sold and delivered by him to the Defendant.

Particulars.

	£	s	d
1910, March 31st, One gold watch ...	27	0	0
" " One diamond ring	71	0	0
Sold and delivered to the Defendant	98	0	0

(Signed) Bedford Roe.

And the sum of £3, 3s. (or such sum as may be allowed on taxation) for costs; and also, in case the Plaintiff obtains an order for substituted service, the further sum of £2, 5s. If the amount claimed be paid to the Plaintiff or his Solicitor within four days from the service hereof, further proceedings will be stayed.

This Writ was issued by Bedford Roe of, and whose Address for Service is, 666 Chancery Lane, London, E.C., Solicitor for the said Plaintiff, who resides at 500 Victoria Street, London, S.W.

This Writ was served by me at 999 Tower Street, London, E.C., on the Defendant on Saturday, the ..... day of .....

Endorsed the ..... day of .....

(Signed) JOHN NICKSON.
(Address) 333 Brixton Road, London, S.W.

Endorsements of claim are of three kinds, viz. "General" endorsements, "Special" endorsements, and "Endorsements for trial without pleadings". The latter mode is little used.

A general endorsement will be in order if it broadly indicates the nature of the plaintiff's claim, save that, in an action for libel, the endorsement must give sufficient particulars to identify the publication complained of, and if an "account" is desired in the first instance this must appear on the writ.

The following are examples of general endorsements:—

1. The plaintiff's claim is for damages for slander.

2. The plaintiff's claim is £98 for return of money paid to the defendant by mistake.

3. The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant and to have the affairs of the partnership wound up.

4. The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse.

A special endorsement can only be used where the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant, with or without interest—

(*a*) Upon an express or implied contract (e.g. on a bill of exchange or for the price of goods sold and delivered). (*b*) On a contract under seal. (*c*) On a statute. (*d*) On a guarantee. (*e*) On a trust; or in an action for the recovery of land with or without a claim for rent or mesne profits. A special endorsement is a "Statement of Claim"; it must be so headed, and must give full particulars of the plaintiff's demand and the nature of the contract which gives rise to it.

The following is an example of a special endorsement:—

The plaintiff's claim is against the defendant as acceptor of a bill of exchange for £400 dated ...., drawn by A. B., payable three months after date to the order of E. F., and endorsed to the plaintiff.

Particulars.

	£	s.	d.
Principal due	400	0	0
Interest	16	0	0
	416	0	0

(Signed) BEDFORD ROE.

If anything else is added to the liquidated demand, it would not be a special endorsement within the terms of the rule.

The Issue and Service of the Writ

The writ of summons may be issued either out of the Central Office of the Royal Courts in London, or, except in Probate actions, out of a District Registry. District Registries are offices of the Court, established in many of the large towns to serve particular areas, where the proceedings preliminary to trial of the cause can be carried on. The writ must be prepared by the plaintiff or his solicitor (blank forms can be obtained at the Law Courts or at a law stationer's); two copies must be made, one bearing a 10s. impressed stamp, the latter to be signed by the plaintiff's solicitor or by the plaintiff himself if he sues in person. These are taken to the Central Office or District Registry as the case may be, the officer fills in the number of the action and, if in the Chancery Division, the name of the Judge, seals the two forms, retains and files the stamped one, and returns the other, the "original writ".

In Probate actions an affidavit made by the plaintiff verifying the endorsement on the writ must be filed, and in Admiralty actions *in rem* (i.e. against the ship or cargo) a warrant for the arrest of the property, preceded by an affidavit, may be issued before the issue of the writ. If the writ is for service out of the jurisdiction, an application, accompanied by an affidavit showing the grounds on which it is made, must be left with the officials at the Courts who bring the matter before the Judge, who, in his discretion, if good cause is shown, grants leave and endorses the writ accordingly.

No personal service of a writ is required if the defendant's solicitor undertakes in writing to accept service and enters an "appearance". The undertaking is written on a copy of the writ, and extends also to the "appearance". Failing this,

the writ must be personally served on the defendant or defendants. Personal service is effected by handing the defendant a copy of the writ (or if he will not take it, the writ may be thrown down in his presence) and showing him the original writ if desired. Service of a writ is good at any hour of the day or night other than a Sunday. If the writ is for service out of the jurisdiction, and the defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, must be served upon him; and if service is to be effected in Germany, Russia, France, Spain, or Belgium, the notice must be transmitted through the Foreign Office. If the plaintiff is unable to serve the defendant personally, he must obtain an order for substituted service. An affidavit, stating the facts relied upon, must be left with the application for consideration by the "Master" or "District Registrar"; and, for good cause, leave may be given to serve the writ on the defendant's agent, or by post or by advertisement or in some other way. In actions for recovery of land when the property is vacant, service is often made by posting a copy of the writ on the front door of the house or on a tree, but to render this effectual an order for substituted service in accordance must afterwards be obtained.

In Admiralty actions *in rem*, failing the solicitor's undertaking, service of the writ or warrant of arrest is effected by fixing the original writ or warrant on the mainmast for a short time and afterwards leaving a copy in its place; or, if the cargo has been transhipped, on the cargo; or, if access to the cargo cannot be obtained, by service on the custodian.

A defendant who has been served with a writ must enter an "appearance" within the time limited either at the Central Office or District Registry as indicated on the writ. An "appearance" is entered by delivering to the proper officer a memorandum in duplicate, headed as the writ, requesting appearance to be entered, containing the name of the defendant's solicitor (or stating that he defends in person), and an address for service. (See Form 2.)

The officer seals the two copies, files one and returns the "original". Notice of the appearance and the "original" memorandum must be sent to the plaintiff or his solicitor at the address for service on the same day. The fee on appearance is 2*s.* for each defendant. If appearance is not entered within the proper time, the plaintiff, upon filing an affidavit of service of the writ, is entitled:

1. If the claim is for recovery of land or for a liquidated amount, to enter final judgment for the recovery of the land or the amount claimed, with interest and costs, against the defendant, or, if more than one, against any defendants not appearing (and he may go on with his action against the others).

2. If the claim is for damages or for the detention of goods, to enter interlocutory judgment, leaving the question of the amount of damages to be assessed subsequently.

3. If the claim is for an account, to an order accordingly.

In other cases the plaintiff must file a statement of claim, and, if the defendant does not appear and deliver his defence within ten days, the plaintiff may apply to the Court for judgment on the facts alleged in the statement of claim, which will be taken as admitted.

After "appearance" further proceedings in the action can, with few exceptions, only be taken by leave or direction of the Court, the jurisdiction in this connection being, subject to the control of the judge, exercised by the Masters of the Supreme Court. (In cases proceeding in a District Registry the powers of a "Master" are there exercised by the District Registrar.) All applications to the "Master" are commenced by summons, which must be served upon the opposite party, by leaving it at his address for service two days (sometimes four days) before it is returnable to the Master in Chambers at the Royal Courts.

Special procedure follows appearance on a writ "specially endorsed", which enables the plaintiff, if there is no real defence to the claim, to obtain speedy judgment. To proceed under this rule, the plaintiff or some other person who can swear positively to the facts justifying the claim, and that the defendant has no valid defence, must make an affidavit to that effect and apply by summons, which must be served on the defendant, together

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Form 2

In the High Court of Justice
King's Bench Division

Between .....

Enter an appearance for ..... in this action .....

Dated the ..... day of ..... 19...

(Signed) .....
of and whose address for service is
.....
Solicitor for the said defendant.

(*N.B.*—The Defendant, if he desires, may enter an appearance in person; he is not bound to employ a solicitor.)

with a copy of the affidavit, four days before it is returnable, for leave to enter final judgment. On the hearing before the Master in Chambers the defendant may oppose the application by affidavit or otherwise. Unless the Master is satisfied that the defendant has some valid defence, leave will be given to enter judgment. If, however, the defendant satisfies the Master that he has some valid ground of defence, unconditional leave to defend may be given, or leave to defend as to part, or upon conditions such as payment of the amount claimed into Court.

When a writ is "generally endorsed" the plaintiff, within fourteen days of the entry of appearance, must take out a summons for directions. All directions as to the subsequent conduct of the action are given on the hearing of this summons, e.g. that the action be tried by a jury or by judge without jury. If, after the first hearing, further directions are required, either party may reinstate the summons in the list for that purpose.

Pleadings

The first point to be decided is—shall there be pleadings? In simple cases the Master may direct the parties merely to give particulars of the claim and defence and go to trial without pleadings, or the action may be transferred to the "commercial list" (see p. 109) and an order made for the delivery of points of claim and defence; but in most cases pleadings are ordered.

Pleadings are documents which the parties to the action exchange with each other stating the facts relied upon by the party delivering the pleading in support of or defence to the claim as the case may be. Pleadings comprise the—

1. "Statement of Claim", in which the plaintiff gives the grounds and particulars of his claim.
2. "Defence", in which the defendant denies the plaintiff's claim and sets forth grounds of defence, with which may be delivered
3. "Counterclaim", if the defendant has a cross claim against the plaintiff.
4. "Reply", in which the plaintiff states his answer to allegations contained in the defence and his grounds of defence to the counterclaim, if there is one. (In very exceptional cases there may follow a "Rejoinder", a "Rebutter", and a "Surrebutter".) The object of pleading is to fix the exact point in dispute between the parties. Every pleading must contain in a summary form all the material facts on which the party pleading relies for his claim or defence. Alternative facts consistent or inconsistent with each other may be pleaded, and it is often necessary to do this, as the exact facts which support the claim may not transpire until all the evidence is forthcoming. If necessary, pleadings should be divided into paragraphs numbered consecutively, and must be signed by counsel or by the solicitor, or by the party himself if he acts in person. The pleadings open with the "Statement of Claim", which states the facts relied upon by the plaintiff as his ground of action against the defendant.

The statement of claim must be served on the defendant, who must then prepare and deliver his defence. The defence may deny all the facts relied upon by the plaintiff, or deny some and admit others, showing further facts which disclose a ground of defence. All facts which are not denied, or specifically mentioned as not admitted, will be considered admitted. The admissions and denials must be frank, comprehensive, and specific; every allegation in the statement of claim, except as to damages, must be dealt with. Every ground of defence which shows the action or counterclaim (for this rule also applies to the defence to the counterclaim) not to be maintainable, or the transaction sued upon void or voidable, must be stated (e.g. defence of Statute of Limitations, fraud, or under Moneylenders Act).

It may be that the defendant has a cross claim against the plaintiff, which may be set up as a defence by way of set-off or as a counterclaim. A cross claim cannot be raised by way of set-off unless it is a liquidated amount which accrued due before the action was commenced, and it can only be pleaded against a liquidated claim, and both set-off and claim must be due from and to the same parties in the same right (e.g. a claim against an administrator as such cannot be set-off against a claim by him personally).

A counterclaim is practically a cross action, and by it the defendant may raise any ground of action against the plaintiff which may conveniently be tried with the plaintiff's claim. It follows after the defence, but is headed "Counterclaim". If the defendant has set up a counterclaim or raised issues of fact in his defence which it is necessary for the plaintiff to answer, he must deliver a "reply" (usually within four days). The foregoing remarks as to drawing up the "Statement of Claim" and the "Defence" generally apply to the "Counterclaim" and "Reply" respectively. Though the pleadings should state facts in summary form, all particulars must be given to enable the opposite party to recognize the exact nature and bearing of the facts alleged against him. If either party considers his opponent's pleading is defective in this regard, he may reinstate the summons for directions in the list and endeavour to obtain an order for "further particulars". By this time the substantial questions in dispute between the parties should

be precisely defined. It is only in rare cases that further pleadings are required. The parties will have now arrived at an "issue" which is to be determined by the Court.

Discovery, Interrogatories, and Inspection of Documents

Though the questions in dispute have been narrowed down, it may be that either or both parties require further information. The plaintiff may desire to inspect the defendant's documents or to obtain from him information or admissions in connection with the case, or *vice versa*. If either party, in his pleadings or affidavits, has referred to documents in his possession, his opponent, on giving him two days' notice, is entitled to inspect and make copies of such as are not "privileged". In a proper case, also, an order for "Discovery" may be obtained on the hearing or a further hearing of the summons for "Directions". The party against whom an order for "Discovery" has been made is required to make an affidavit giving a list of all documents relating to the case which are or have been in his possession. The list distinguishes (1) documents in his possession which he does not object to produce; (2) documents in his possession for which he claims privilege; (3) documents which have been but are not now in his possession—what has become of them or in whose possession they now are, being stated. Being documents referred to in an affidavit, the opposite party is entitled to inspect those for which "privilege" is not claimed as above-mentioned. Should inspection be refused or any "privilege" claimed be disputed, the question is fought out on a summons before the Master, who will make such order as seems just. Further, if either party requires information from the other, application should be made for leave to administer "Interrogatories".

If leave be obtained, the party interrogating is allowed to question his opponent, in writing, as to facts within his knowledge, which questions must be answered on oath. A copy of the proposed interrogatories must be submitted to the Master on making the application for leave, and only those will be allowed which are considered necessary for fairly disposing of the cause, and in this connection any offer of the opposing party to give particulars, make admissions, &c., which would render the proposed interrogatories unnecessary will be considered. In the affidavit in reply the answers must be full and particular, and if the interrogatories are well drawn there will be no loophole for evasion. An objection to answer one or more of the interrogatories may be taken in the affidavit in reply as being scandalous, irrelevant, not *bona fide* for the purpose of the action or on the ground of "privilege". If the interrogator is not satisfied with the answers, he must again apply to the Master. The question whether the interrogatories are scandalous, irrelevant, or not *bona fide* depends on the circumstances of the particular case and need not be discussed, but the grounds of "privilege", which equally serve to resist production of documents or answers to interrogatories, must be stated.

Privilege

The party may justify his refusal to answer an interrogatory or produce a document if he can show by affidavit that the answer to the interrogatory or production of the document:

1. Would tend to criminate him or render him liable to a penalty or forfeiture (e.g. forfeiture of a lease);

2. Would disclose written or oral communications between the party and his legal professional adviser, or documents and communications which had been made in anticipation of litigation and with a view to obtain evidence or information in connection therewith;

3. Would disclose merely the evidence in support of his own case, or, being a defendant in an action for ejectment, that the documents of which production is sought relate solely to his own title and do not support the case of his opponent;

4. Would be injurious to the public interest (e.g. objection by a Secretary of State to produce diplomatic correspondence).

Evidence

Having obtained all necessary information, both parties must take steps to ensure that the facts relied upon by each shall be presented to the Court at the trial in a proper manner. For this purpose the attendance of witnesses, who can speak directly to the facts it is desired to prove, or who hold documents which they are required to produce, must be enforced by "subpœna" (i.e. a writ issued by the Court commanding the attendance of a person as a witness). Witnesses can only testify as to relevant facts within their own knowledge, opinions of a witness (except expert or professional opinion in certain cases) and information he has obtained from third parties are not, generally speaking, evidence. If original documents, books, &c., are in possession of the other side, "notice to produce" them must be served, as otherwise, if they are not forthcoming at the trial, copies cannot be put in evidence.

On the other hand, to save useless expense, "notice to inspect and admit" must be given by

a party who has books or documents in his possession which he intends to use in support of his own case, as, if this notice is not given or the party receiving the notice refuses to inspect and admit accordingly without just cause, the defaulting party may have to bear the extra cost of proof incurred (e.g. proving the due execution of a deed or the signature to a letter).

In the same way one party may serve a notice on the other requiring him to admit, for the purpose of the action, certain specified facts, and should such admission be unreasonably refused, the refusing party may be mulcted in costs.

The Trial

The place and mode of trial will have been fixed by the Master on the summons for directions; the place of trial is a matter for his discretion, but the mode of trial is subject to rule. In all actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, either party has the right, on notice, to have the cause determined by a judge and jury. Causes assigned specially to the Chancery Division are tried without a jury. In all other cases either party may obtain an order for a trial with a jury, unless for special reasons the Court has directed trial before a judge alone. If no application is made, the trial will be by a judge without a jury. In any jury action a "special" jury (i.e. selected from men who are assessed for poor rate above a certain amount) may be obtained at the instance of either party. Notice of trial may be given by the plaintiff when he delivers the "reply", or, if no reply be ordered, on the expiration of four days after delivery of the defence. If he does not give notice within six weeks, the defendant may give notice or may apply to have the action dismissed for want of prosecution. The notice must be given ten days before the trial, and the action must, generally speaking, be entered for trial by the party giving notice within six days, and two complete copies of the pleadings must be delivered to the officials of the Court.

When the case is called on for trial, there may arise a question as to who has the right to begin. The case for the plaintiff is opened first unless the defendant has admitted all the material allegations in the plaintiff's claim, and relies for his defence on other matters put forward in his own pleadings. If the damages claimed are unliquidated, the plaintiff, therefore, will always have the right to begin unless the defendant admits the damages to the full amount claimed. Counsel for the party entitled to begin outlines his case, more or less fully, and calls his witnesses. The witnesses are examined by him to bring out the points favourable to the plaintiff's case, cross-examined by the defendant's counsel in order, if possible, to break down their evidence in favour of the plaintiff and bring out facts favourable to the defendant, and re-examined by the plaintiff's counsel as to fresh matters touched upon in the cross-examination which require explanation.

After the witnesses for the plaintiff have given their evidence the counsel for the defence opens his case—unless the defence are not calling any witnesses, in which case the plaintiff's counsel would sum up his case and the defendant's counsel would be entitled to the last word—calls his witnesses, who are examined, cross-examined, and re-examined. Then the counsel for the defence addresses the Court on behalf of the defendant, and the plaintiff's counsel follows on with his address on behalf of the plaintiff. If there is a jury, the judge then sums up, the jury give their verdict, and judgment follows; if otherwise, judgment is delivered after counsel's closing address. Judgment must be entered up by the successful party and, unless "stay of execution" is granted with a view to an appeal, may be enforced by "execution". Any party aggrieved by the judgment may, within three months, appeal to the Court of Appeal and thence to the House of Lords. If the action has been tried by a judge and jury, the successful litigant will be entitled to costs, unless for good cause the judge orders otherwise; but in other cases costs are in the discretion of the Court.

Enforcement of Judgment

If the judgment be for the payment of a sum of money and costs, execution may be issued for recovery of the sum without delay; but payment of the costs cannot be enforced until they are taxed, and the second writ of execution for costs cannot be issued until eight days after the first. The usual mode for obtaining payment of a sum of money is by Writ of *Fieri Facias*, generally known as *Fi. Fa.*, which is issued out of the Central Office (or District Registry) and directed to the Sheriff of the County wherein the property lies, directing him to seize and sell the goods and chattels of the judgment debtor to the amount of the judgment, with interest and costs of execution. Under this writ the sheriff's officers can enter the debtor's house or premises and sell all his goods and chattels (including leasehold interests in land) save wearing apparel, bedding, and tools to the value, in all, of £5. Execution against freehold land is obtained by Writ of *Elegit*,

under which the sheriff puts the creditor in possession of the debtor's land until the debt is satisfied. If debts are owing or accruing due to the debtor from third parties—and an order may be obtained for an examination of the debtor on this point—an order for attachment of those debts may be obtained, and payment will have to be made to the judgment creditor. In some cases, where execution cannot be made in the usual way (e.g. partnership profits as they become divisible), a receiver can be appointed by way of equitable execution to receive profits, &c., which accrue to the debtor and pay them over to the judgment creditor until his claim is paid. Charging orders can also be obtained on any stocks or shares in which the debtor has an interest standing in the books of a company.

Imprisonment of debtors for non-payment of money is forbidden by the Debtors Act, 1869, with a few exceptions. A judgment for the recovery or the delivery up of possession of land is enforced by Writ of Delivery. If the sheriff cannot find the property mentioned, he is empowered to take and hold possession of all the goods, chattels, and land of the debtor until the property is delivered to him.

If the judgment is for payment of money into Court or to do any other act within a limited time, in case of disobedience a Writ of Sequestration may be issued, under which the estate and effects of the judgment debtor are handed over to the persons named in the writ (not less than four) and held until satisfaction.

A judgment requiring any person to do an act other than the payment of money, or to abstain from doing anything, may be enforced by Writ of Attachment, under which the person named is committed to prison until he purges his contempt by obeying the order of the Court.

The Commercial Court

The name "Commercial Court" is properly applied to the Court presided over by one of the King's Bench Judges, to whom is assigned the hearing of commercial causes. The keeping of a separate list for these causes was the outcome of a resolution of the judges passed in May, 1894. It had long been felt that some special consideration must be paid by the Courts to the disputes of commercial men. Rules were framed, and in March, 1895, the first Court sat, Sir James Mathew being the first judge, and to him was chiefly due the successful inauguration of the new Court. Not only was the object to secure the services of a judge with special knowledge of commercial law, but the jury, where a jury is required—and it is the exception rather than the rule—is drawn from the City.

Commercial causes are now heard in Liverpool in the same way as they are heard in London.

A commercial cause is defined by the rules as one arising out of the ordinary transactions of merchants and traders, amongst others those relating to the construction of mercantile documents, the export or import of merchandise, affreightment, insurance, banking, and mercantile agency and mercantile usages. Not all causes, however, of this description are tried in the Commercial Court. An application has to be made for the transfer on the summons for directions, and it depends very much upon the views of the judge as to what will be considered a suitable cause for the Commercial Court.

Sir Thomas Scrutton says, speaking generally, cases relating to policies of insurance, charter-parties, bills of lading, and any case involving a real question under the law merchant are always transferred, but stock exchange and bills of exchange cases which are merely debt-collecting actions are not transferred, and the same principle is applied to the other classes of case mentioned. Cases may be transferred from the Chancery Division.

The procedure of the Commercial Court is a simplified one. Points of claim and defence are delivered instead of the more formal statement of claim and defence, but the necessary particulars and lists of documents are expected to be furnished. Preliminary questions may be disposed of by the judge, who hears all such applications, and a definite day is fixed for the trial.

The Court has had a continuous success, has fully justified the aims of its founders, and deserves well of the commercial public.

Procedure by Originating Summons

Actions can only be commenced by originating summons when so provided by a Statute or a Rule of Court. The most important of these actions are assigned to the Chancery Division, and that procedure is alone referred to here An originating summons can be used:—

(1) For the determination of any question of construction of a written instrument (contract, &c.);

(2) For the determination of questions concerning the due administration of a deceased person's estate or of a trust, or as to the rights of creditors or beneficiaries;

(3) For the determination of any question concerning the foreclosure or redemption of mortgages;

(4) For applications under the Vendor and Purchaser Act, 1874, concerning the sale and purchase of real or leasehold estates;
(5) For applications under the Conveyancing Act, 1881, concerning the discharge of encumbrances on the sale of land, lifting the restraint in anticipation for the benefit of married women, &c.;
(6) For applications under the Settled Land Acts, and in various other matters.

The great advantage of commencing an action by way of originating summons is that the procedure is more simple, there are no pleadings, the evidence is usually taken by affidavit, and there is a great saving of expense.

The summons is served and sealed as a Writ, and bears on its face a statement of the nature of the claim made and the question to be decided. The parties served are required (with certain exceptions) to enter an appearance within eight days. After appearance, or on certificate that no appearance has been entered, a day is fixed for the hearing of the summons, and notice must be served on the defendants.

The Chancery judges hear originating summonses in open Court. Parties are represented by counsel, who set forth the facts, points of law, and evidence relied upon by their respective clients. At the conclusion of the arguments the judge gives his decision, and an order is drawn up accordingly.

Should any party fail to attend at the hearing of the summons, the judge may proceed in his absence.

THE COUNTY COURTS AND THEIR PROCEDURE

The County Courts, as at present existing, were established by Statute in 1846. Their jurisdiction was extended by several subsequent statutes, and is now governed by the County Courts Act, 1888, as amended by subsequent Acts. For County Court purposes England and Wales are divided up into some five hundred districts, each with its Court. Judges must be barristers of not less than seven years' standing. In each district a Registrar attends to the preliminary and interlocutory proceedings, and by a High Bailiff or his officials the summonses, orders, and warrants of the Court are served and executed.

Jurisdiction

The County Courts have jurisdiction in all personal actions (i.e. ordinary actions of contract or tort) and in actions concerning land when the debt or damage or the annual value of the land claimed does not exceed £100 (provided the title to lands of greater value does not come in question), and over proceedings concerning trusts, mortgages, dissolution of partnership, administration of assets, and various other matters, which in the High Court would be the subject of proceedings in the Chancery Division, when the amount of the trust fund, mortgage, partnership assets, &c., does not exceed £500. Beyond these amounts, unless the excess is abandoned or the claim is reduced to an amount within the limit by admitted set-off, and in actions for libel or slander, seduction, breach of promise of marriage, or in actions where the title to any toll, fair, or franchise is in question, these Courts have no jurisdiction, unless by consent of the parties or where remitted from the High Court.

The County Courts also exercise certain jurisdiction in Bankruptcy and Probate and Admiralty proceedings. (See Chapters XI and XIII of this Part and Part VI.) Arbitrations under the Workmen's Compensation Act, 1906, take place in the County Courts. (See Chapter X of this Part.)

Every action or matter must be commenced in the Court of the district where the defendant or one of the defendants then dwells or carries on business, unless the judge or registrar gives leave to commence it in the Court of the district where he dwelt or carried on business within the previous six months or where the claim wholly or in part arose, with the following exceptions:

(*a*) Proceedings which relate to the recovery or sale of any mortgage, charge or lien on lands, or to partition are to be taken in the district where the lands are situated.

(*b*) Actions may be commenced in the City of London Court if the defendant is employed within the city, or the cause of action wholly or in part arose there.

(*c*) If both plaintiff and defendant dwell or carry on business within the Metropolitan area, though in different districts, the action may be commenced in either district.

(*d*) Applications under the Trustee Acts, 1850 and 1852, are to be made in the district where the applicant resides.

(*e*) Administration actions are to be commenced in the district where the deceased died, or where one of the executors or administrators lives.

(*f*) Partnership proceedings must be commenced in the district where the partnership business is carried on.

Procedure

Actions in the County Court are commenced by the entry of a "plaint". The plaintiff or his solicitor must attend at the offices of the Court of the district in which he intends to sue and fill up a form of request (a "præcipe") for the issue of a summons. The "præcipe" must give the full names, addresses, and descriptions of the plaintiff and defendant (where known), the amount of the claim, and what it is for. If the plaintiff sues or the defendant is sued in a representative capacity this must be stated, and if the plaintiff sues as assignee the name, address, and description of the assignor must be given. A plaint may be entered by post if the plaintiff does not reside in the district. A plaintiff who does not reside in England or Wales will be required to give security or a solicitor's undertaking for costs before the summons can be issued. When leave is required to enter a plaint in the Court of a district where the defendant does not dwell or carry on business, application must be made on affidavit upon the prescribed forms, which are obtainable at the office of the Court, stating the grounds relied upon in support of the application, and must be left with the registrar, together with a copy for the defendant (or each defendant, if more than one). Leave is granted or refused at the discretion of the judge or registrar, but cannot be granted if the proposed defendant is a domestic or menial servant, labourer, artificer, or employed in manual labour, unless it appears from the affidavit that—

(1) The defendant was residing in the district when the debt or cause of action wholly or in part arose; or

(2) The defendant, or some person on his behalf, or for whose act or default he is responsible, was present in the district when the debt or cause of action wholly or in part arose; or

(3) The plaintiff believes the defendant admits the claim, and that not more than twenty nor less than ten days ago the defendant had notice of the plaintiff's intention to apply for leave, and was required to state whether he disputed the claim, and has either admitted or failed to give notice that he disputed the claim;

Or unless—

(4) The judge or registrar is satisfied that the proposed place of trial is not less convenient than the place where the defendant could be sued without leave.

The rules as to the parties to an action and joinder of causes of action are substantially the same as in the High Court. If an infant wishes to commence an action (other than for wages or piece work), he must sue by his next friend. Unless the action is commenced by ordinary summons for debt or damage only for an amount not exceeding 40s., written particulars of the claim must be given when entering the plaint. In actions for debt a copy invoice of the goods supplied, bill for work done, or statement of money lent, will suffice; in other cases a concise statement of the ground of action must be given. If fraud is alleged, it should be distinctly stated. In actions of ejectment (i.e. actions for recovery or possession of land) full particulars of the property must be given, and the annual value or rent. If an account is claimed, in the first instance the particulars must show this, and state that the amount claimed is subject thereto. In all cases, if the amount of the claim exceeds £100, and the plaintiff desires to abandon the excess so as to bring it within the jurisdiction, this must be stated at the end of the particulars. In administration actions the plaintiff may claim the decision of the Court on particular points as described in the earlier part of this chapter in connection with procedure by "Originating Summons" in the High Court, in which case the particulars must show what question is submitted for the decision of the Court, and that the plaintiff renounces his right to an order for general administration. When the plaint is for more than one cause of action, the particulars must state each claim and the remedy claimed separately. If full particulars are not given the defendant may, within five clear days before the day for hearing, give notice for further particulars, which the plaintiff must file and deliver within two days. If he does not the Court, before or at the trial, may, if the defendant is prejudiced by his refusal, order particulars and adjourn the trial, and make such order as to costs as seems just.

Particulars are to be signed by the plaintiff (or his solicitor).

At the time of entering the plaint the registrar gives the plaintiff (or his solicitor) a note under the seal of the Court (the plaint note), which must be produced if payment out of any money paid into Court is required.

There are three kinds of County Court summons: "Ordinary Summons", "Default Summons", and "Default Summons under the Bills of Exchange Act".

The summons is prepared by the officials of the Court. Service is effected by one of the bailiffs or, in some cases, by the plaintiff or his solicitor or some person in their service. The "particulars" must be served with the summons.

Ordinary Summons

An ordinary summons is returnable (i.e. will be heard) either at the Court for which plaints are

then being issued or at a subsequent Court at the plaintiff's request. An ordinary summons is served by one of the bailiffs of the Court, unless the amount is over £50 or leave has been obtained to serve it out of the district and the address of the defendant cannot be given, in which case the summons must be served personally on the defendant, and may be served by the plaintiff or his solicitor or some person in their service. If the amount claimed is under £50, the summons, if for service within the district, must be in the bailiff's hands fifteen days, or, if for service out of the district, eighteen days before the return day, and in either case served on the defendant ten days before the return day. If the amount claimed is over £50, the times are twenty-five, twenty-eight, and twenty days respectively. In actions of ejectment and in a few other cases these times are extended. Service of an ordinary summons is usually effected by delivering the same personally to the defendant, or, if the amount claimed is under £50, by delivering it to some person apparently over sixteen years of age at the house or place of business of the defendant (if the defendant is the master or one of the masters of the business). If by the endorsement it appears to have been served as last mentioned, and the defendant does not appear, the action cannot go on if the Court is satisfied on the evidence before it that the summons did not come to the defendant's knowledge. In such case the Court may order the action to be struck out, or a successive summons to issue, or, in doubtful cases, adjourn for further evidence, and direct notice of the adjournment and a copy of the summons and particulars to be served on the defendant, which may be done by post A solicitor may accept service on behalf of the defendant. If the defendant is an infant, service on his father, guardian, or the person with whom he resides is deemed good service on the infant, but the Court can order service on the infant himself. Where husband and wife are both defendants in an action they must both be served, unless the Court otherwise orders. If the defendant is a lunatic or person of unsound mind, the summons is served on the "committee" of the lunatic or on the person with whom the person of unsound mind resides. When persons are sued as partners in a firm, the summons may be served upon any one or more of them, or at the principal place of business on any person in charge or control. One person carrying on business in a name or style other than his own, and sued in such name, may also be served as above. Special provisions are made for the service of soldiers, sailors, miners, prisoners, and others. Where the defendant keeps his house to avoid service, it is sufficient to affix the summons to the door. In actions of ejectment, if the property is vacant, the summons may be affixed to the door or in some other prominent position on the property. When service cannot be effected as prescribed, the judge or registrar will, in a proper case, make an order for substituted service by post, advertisement, or otherwise.

When an ordinary summons cannot be served owing to the defendant having removed from the address given, the summons may be amended to allow service in sufficient time before the return day, and on payment of an additional fee if required. If the bailiff ascertains a sufficient time before the return day, and before notice of non-service is sent to the plaintiff, that the defendant has removed to another address within his district, he must serve there and alter the address on the summons. If an ordinary summons is not served in time, a successive summons (i.e. issued on the same plaint but for a subsequent Court) can be issued within three months, but not if a wrong address has been given, unless the plaintiff satisfies the Court that it was given in good faith and without want of reasonable care. A successive summons may be served by the plaintiff or his solicitor or some person in the service of either. If an ordinary summons is served otherwise than by a bailiff, an affidavit of service must be filed, if the amount claimed is under £50, seven clear days before the return day. If the amount exceeds £50, or, in the case of a successive summons, the affidavit, together with a copy of the summons endorsed with the date, place, and mode of service, must be delivered to the registrar within three clear days of the date of the service, or such further time as may be allowed.

Default Summons

A "Default Summons" can only be issued when a debt or liquidated amount is claimed. Leave is required if the amount claimed is under £5, and is not for the price or value or hire of goods supplied to the defendant in the way of his trade, and cannot be obtained if the proposed defendant is a domestic or menial servant, labourer, artificer, or engaged in manual labour. At the time of entering the plaint the person, or some person in his service who can speak to the facts, must make an affidavit verifying the claim. Particulars are required in every case, and copies must be served with the summons. The summons may be served by the bailiff or, if request is made on the "præcipe" or by leave of the registrar if the bailiff cannot serve the defendant, by the plaintiff or his solicitor or some person in the employment of either. A default summons must be served per-

sonally on the defendants, but service on one partner, where defendants are sued in a firm name, or at the registered office of a defendant limited company, is sufficient. In a proper case also an order for substituted service may be obtained. If service is effected by some person other than the bailiff, a copy of the summons, with particulars of service endorsed thereon and an affidavit verifying same, must be sent to the registrar within three days of the service. If the plaintiff is willing to accept payment by instalments, he should file a notice to that effect, and a copy must be served with the summons. A default summons is in force for twelve months, but if not served, a successive summons for a further twelve months may be obtained from time to time as required if applied for during the currency of the previous one, and the registrar is satisfied that there is good reason for the delay. After service the defendant must, within eight days, send to the registrar, by post or otherwise, a notice of defence on the form annexed to the summons. If he does not, the plaintiff, on proof of service, may at any time within two months enter up judgment by default against the defendant for the amount claimed and costs, but even then the defendant may be allowed to defend if he makes an affidavit disclosing a defence upon the merits and satisfactorily explaining his neglect.

Proceedings may be commenced by Default Summons under the Bills of Exchange Act, 1855, when an amount exceeding £10 is claimed on a bill of exchange or promissory note not more than six months overdue. The plaint is entered in the usual way, and the summons is served as an ordinary default summons.

Unless the defendant, within twelve days of the service, obtains leave to defend, the plaintiff may, at any time within two months of the service, obtain judgment against him for the amount claimed and costs. Leave to defend is obtained on affidavit showing some valid ground of defence, or on paying the amount claimed into Court, or on other terms as required by the registrar.

Special Defences

In the majority of County Court cases, being in respect of small debts, trial immediately follows the service of the summons, but as the minority comprises the more important actions, the various interlocutory notices and proceedings must be considered. A defendant who relies on any of the following defences must file with the registrar a duplicate notice, with full particulars and copies for each plaintiff, five clear days (if the amount exceeds £50, ten clear days) at least before the return day:—

1. Set-off or counterclaim. 2. Infancy. 3. Coverture. 4. Statute of Limitations. 5. Discharge under the Bankruptcy Acts. 6. Justification, apology, or circumstances in mitigation of damages in actions of libel and slander. 7. Any statutory defence (e.g. Statute of Frauds, Public Authorities Protection Act). 8. Any equitable defence (e.g. claim for rescission of the contract sued upon). 9. Tender (in which case also the sum tendered must be paid into Court with the notice of defence).

If notice is not given, and the plaintiff will not allow the defendant to avail himself of such defence, the judge may adjourn the trial to enable notice to be given on such terms as he thinks fit.

Payment into Court, &c.

A defendant may pay money into Court to meet the plaintiff's claim with or without a denial of liability (except in libel and slander actions), and if the plaintiff still goes on with the action and does not recover more than the amount paid in, he will be liable for the defendant's subsequent costs. Payments may also be made to the plaintiff with practically the like effect. A defendant who admits the plaintiff's claim or the grounds of action sued upon may sign an admission to that effect in the presence of the registrar, or the registrar's clerk, or a solicitor, or may admit the claim by letter addressed to the Court, and thus save a portion of the costs. If the defendant claims to be entitled to contribution or indemnity from some third party in respect of the plaintiff's demand, he must file a notice to that effect. This the registrar will seal and deliver to the defendant, who must serve it, together with a copy of the summons and particulars, on the party against whom such contribution or indemnity is claimed. If the third party disputes his liability at or before the trial, the judge may order the question to be tried at or after the trial of the original action, or may give the third party leave to defend the original action or substitute him as defendant or join him as defendant on such terms as he thinks just.

Orders for discovery and inspection and production of documents, and for leave to administer interrogatories may, where necessary, be obtained as in the High Court. Applications for an order of discovery or for leave to administer interrogatories should be made to the registrar. From his decision there is an appeal to the judge, and from the judge to the High Court (if the amount in dispute is over £10).

The party applying may be required to deposit

a sum (usually £1) as security for costs. To save costs, a party desiring to put in evidence documents in support of his case may give his opponent notice before the trial to inspect and admit them, and if the notice is not complied with, the extra cost of proof will have to be paid by the defaulter unless the Court otherwise orders.

Notice to produce documents in their possession referring to the case should be given to the opposite side if their production is required, as otherwise copies cannot be put in evidence.

Trial

Actions in the County Court are usually tried by the judge alone; but in cases other than those which in the High Court are assigned to the Chancery Division, where the amount of the claim exceeds £5, either party may, on notice to the registrar, obtain a jury. The jury in the County Court is made up of eight jurors, and the party applying must deposit eight shillings when giving the notice. The attendance of witnesses is enforced by means of a "subpœna", either issued without leave and served by the bailiff of the Court, or by leave in blank and filled in and served by the party or his solicitor. A subpœna is served either personally or by being left at the house or place of business of the party sought to be served, with some person apparently over the age of sixteen years. It may be served out of the district of the Court wherein the action is to be tried. At the time of service the witness must be paid his expenses or "conduct money", which is usually held to be the amount necessary for travelling expenses. If a witness duly summoned, and to whom conduct money has been paid or tendered, does not attend the trial, he is liable to a fine of £10, and the judge may direct payment of the whole or part of this sum (less costs) to be paid as compensation to the party injured by his neglect. A witness may be required to produce books or documents in his possession referring to the case, and a clause to this effect can be added to the subpœna. At the trial of the action both parties or their representatives should attend the Court. A party may be represented either by his solicitor, who has had the general conduct of the case, or by a barrister retained by a solicitor. The cases are called over first in the registrar's Court. If the plaintiff does not appear on the day fixed for hearing the case, it is struck out; if he appears but does not prove his claim to the satisfaction of the Court, he may be non-suited, or judgment may be given for the defendant; and in either case, if the defendant has appeared and does not admit the claim, he may be allowed costs for his trouble and attendance.

In an action founded on contract where the defendant does not appear, judgment may be entered by the registrar for the plaintiff for the amount of his claim and costs, upon proof of due service of the summons and also of the debt being due and owing. In other cases on proof of service of the summons the judge may proceed to trial in the defendant's absence and give judgment. In either of the above two cases the judgment may be set aside by the judge, and a new trial granted upon such terms as he considers just. Actions where the amount of the sum claimed or amount involved does not exceed £2 may be tried by the registrar at the request of the parties. The procedure at the trial before the judge is similar to the procedure in the High Court, but the defendant or his counsel is generally restricted to one speech. At the close of the evidence, if there is a jury, the judge sums up and awaits their verdict as to facts. Where the judgment is for payment of a debt or damages, the payment may be directed by instalments.

In some cases, where the plaintiff has not proved his claim to the satisfaction of the Court, and yet it does not appear the defendant is not liable, a non-suit may be entered, but the plaintiff is usually ordered to pay the costs. In this latter case the plaintiff may litigate the matter over again, as the cause has never come to judgment. Where judgment is given, costs follow the event unless otherwise ordered. The costs of the successful party are taxed by the registrar and the amount allowed is governed, within certain limits, by scale which varies according to the amount recovered (or in the case of the defendant the amount claimed). Costs which a party has to pay his own solicitor may also be taxed by the registrar on the application of either the solicitor or the client.

Enforcement of Judgment

Where the judgment is for payment of debt or damages in case of default, the judgment may be enforced against the goods of the defaulter by means of a warrant of execution. The warrant is issued by the registrar of the Court, and empowers the high bailiff (or his officers) to seize the goods of the party and, unless payment in satisfaction is made, to sell after five days (or earlier at the request of the debtor, or if the goods are of a perishable nature). For the purpose of the execution the bailiff may not only enter the defendant's dwelling-house, but also the house of a third party if any goods of the defendant are there. He may seize all the defendant's goods and chattels excepting wearing apparel, bedding, tools, and implements of trade to the value of £5. Any bills of

exchange, bonds, or other securities are held by the bailiff as security for the amount directed to be levied, and the plaintiff may sue on them when the time for payment arrives. If a third person sets up a claim to the goods, he must give notice to the bailiff in writing, and on giving security or making a deposit to the value of the goods claimed, or on paying the bailiff's costs of keeping possession until the question can be decided, an interpleader summons will be issued by the Court calling upon the third person called the "claimant" and the execution creditor to appear before the Court (see p. 106).

The sale is usually by public auction, and the bailiff must not sell more than is necessary to satisfy the amount for which the execution is levied.

A judgment creditor may obtain an order for the oral examination of the judgment debtor as to his means and as to whether any or what debts are owing to him. Before or after such examination the judgment creditor, upon lodging with the registrar of the Court in which the garnishee could be sued by the judgment debtor an affidavit by himself or his solicitor showing that the judgment has been recovered and is still unsatisfied, and to what amount, and that some other person (called the "garnishee") is indebted to the debtor, can obtain the issue of a summons calling upon the garnishee to show cause why he should not pay the amount of his debt, or so much thereof as will satisfy the judgment debt due to the judgment creditor. The summons is served on the garnishee in the same manner as a default summons, and when served binds in the hands of the garnishee all debts due, owing, or accruing from him to the judgment debtor. If the garnishee admits his indebtedness to the judgment debtor, he should pay the amount into Court. If he does not, judgment will be given against him unless he can successfully dispute his liability. Payment made by the garnishee under garnishee proceedings operates as a valid discharge of his original debt.

Judgment Summons

A judgment creditor may obtain the issue of a "judgment summons" against the judgment creditor. This summons may be issued by the Court in which the judgment was obtained, or by the Court of the district in which the debtor then is. A judgment summons is served in the same way as a default summons. On the hearing of the summons, if the judge is satisfied on the evidence given that the debtor has or had, since the date of the judgment, means to pay the amount, he may commit him to prison for a term not exceeding six weeks; or he may make an order for commitment and hold it in suspense whilst the debtor pays off the amount of the judgment debt by regular instalments. No order for commitment will be made unless proof of means be given.

Imprisonment does not operate as a satisfaction of the debt in any way.

Satisfaction of a judgment debt may be obtained in the County Court, as in the High Court, by means of the appointment of a Receiver.

Judgments for the recovery of land are enforced by "warrant of possession", and for the recovery of specific chattels by "warrant of delivery".

Certain judgments can also be enforced in the County Court by imprisonment for contempt, but County Court judges rarely exercise this power. There is an appeal from the County Court on points of law raised at the trial. Appeals are heard by a Divisional Court of the High Court of Justice, whose decision is final, unless by leave.

LOCAL COURTS

The ordinary civil litigation in England is carried on or commenced in the High Court or the County Court, but there are important exceptional local Courts.

The Lancaster Chancery Court

This Court, when the cause of action arises, or the person against whom the action is brought is, within the boundaries of the County Palatine, has all the powers of, and a concurrent jurisdiction with, the Chancery Division of the High Court. Actions commenced here which under the High Court Rules are not assigned to the Chancery Division may, at any stage, be transferred to the High Court by order of this Court or the Court of Appeal. Actions are commenced by Writ similar in form to that used in the High Court, but tested in the name of the Chancellor of the Duchy of Lancaster. The system of pleading is similar to that in the High Court. The Vice-Chancellor of the Duchy is the judge of the Court, which sits alternately in Manchester and Liverpool. There are registries of the Court in Manchester, Liverpool, and Preston, the last having a branch office in Blackburn. The registrars have similar duties and powers to those of the Masters of the High Court. Appeals from this Court go to the Court of Appeal and thence to the House of Lords.

The Mayor's Court of London

This Court is one of the most ancient Courts in the kingdom. Sittings of the Court are held monthly at the Guildhall, and are presided over by the Recorder of the City of London, the Common Sergeant, or a deputy judge. The registrar of the Court has powers similar to those of a Master of the Supreme Court. The Court has a jurisdiction unlimited in amount over practically all causes of action arising wholly within the City of London, and also over all claims for debt or damage not exceeding £50, provided the defendant or one of the defendants dwells or carries on business in the City at the time of action, or has so dwelt or carried on business within the previous six months, or if the cause of action wholly or in part arose there. Any objection to the jurisdiction must be taken by plea. The system of pleading in force is that used in the superior Courts before the Judicature Act, 1873. The Sergeant-at-mace and his deputy execute the process of the Court. Parties dissatisfied with the result of an action may, under certain conditions, apply for a new trial, or appeal to the High Court.

The Liverpool Court of Passage

The jurisdiction of this Court is unlimited in amount in all common-law causes of action (with the exception of "Ejectment", which is limited to claims between landlord and tenant where the value of the land in dispute does not exceed £100) where the defendant resides within the City of Liverpool, or by leave of the Court where the action wholly or in part arose there, provided that, in both cases, if the amount of the claim is under £20 the cause of action must wholly have arisen in the City.

The Court has no equitable jurisdiction. Proceedings are commenced by Writ tested in the name of the Lord Mayor of Liverpool. The rules of procedure and the system of pleading are similar to those in the High Court.

The Court has jurisdiction in Admiralty cases arising within the limits of the Port concurrent with the Liverpool County Court. The registrar has, in all proceedings before the Court, the powers of a Master of the High Court. The process of the Court is executed by the Sergeant-at-mace. Appeals from the judgment of the Court go to the Court of Appeal.

The Salford Hundred Court

This Court has jurisdiction—

1. Over all personal actions where the amount claimed does not exceed £50.

2. Over actions of ejectment where the annual value of the land does not exceed £50.

3. Over any action (except libel, slander, and seduction when the amount claimed exceeds £50) with the written consent of the parties, provided the whole cause of the action arose within the area of the Hundred of Salford, with the following exceptions—

(i) Causes of action arising within the Borough of Bolton and which are within the jurisdiction of the Bolton County Court, when the amount of the claim does not exceed £5.

(ii) Causes of action arising within the Borough of Heywood and which are within the jurisdiction of the County Courts of Bury or Rochdale, when the amount claimed does not exceed £5.

(iii) Causes of action arising within the Borough of Rochdale and which are within the jurisdiction of the County Court of Rochdale, when the amount claimed does not exceed £5.

(iv) Causes of action arising within the Borough of Oldham which are within the jurisdiction of the County Court of Oldham.

Objections to the jurisdiction must be taken by plea. The Writ is tested in the name of the High Steward, and can be served in any part of England and Wales. The rules of the Supreme Court apply to its proceedings, but the old rules have not been annulled. The Registrar in matters before him has the powers of a Master of the High Court. The process of the Court is executed by the High Bailiff. Appeal lies to a Divisional Court of the High Court of Justice.

Other Local Courts

Other peculiar Courts with local civil jurisdiction exist in some boroughs, such as the Tolzey Court at Bristol.

Criminal Courts

It is not necessary to treat of the Courts of Criminal Jurisdiction, the Central Criminal Court for London and parts of the adjoining counties, and the Assize Courts. The Magisterial Courts, however, in Quarter Sessions, and more frequently in Petty Sessions, exercise a quasi-civil jurisdiction. It is before a Court of Summary Jurisdiction, i.e. two justices or a stipendiary or London alderman, that prosecutions for fines or penalties under the Merchandise Marks Acts and similar statutes are brought. In these Courts, too, many small money claims may be enforced in connection with master and servant and other matters, but their ordinary duties lie outside the scope of this work.

SOLICITOR AND CLIENT

As legal business cannot, as a general rule, be carried on without the intervention of a solicitor, it will be well to consider the position of a solicitor so far as it affects his clients, and generally the law affecting the relationship of solicitor and client. (See, as to the profession of Solicitor, Part I, Chapter XIII.)

It is, of course, open to anyone to enter upon litigation and conduct a case in Court without solicitor or counsel, should he feel so disposed. It may be confidently said, however, that there are very few cases in which such a course would be advisable, partly on account of technical difficulties and want of ability as an advocate, but quite as much because it is always advisable that all disputes should be sifted and argued by those not personally interested. The assistance of solicitors and counsel can be obtained by poor persons in a fit case without cost. (See p. 106.)

All communications between a client and his solicitor or counsel on professional matters are "privileged", that is to say, the client can object to their production as evidence in any Court.

Any person legally competent to contract may retain a solicitor, as can also an infant where the services to be rendered can be regarded as necessaries, e.g. drawing up a marriage settlement. A solicitor may be retained verbally or otherwise, but before commencing an action he should be authorized in writing. The Supreme Court, in pursuance of its summary jurisdiction over its officers, will punish a solicitor who brings an action without the authority of his client. A solicitor is held to warrant the existence of his client in litigious business; and may be made personally liable for costs, for example, if he holds himself out as representing a company which in fact has no corporate existence.

Solicitors have a right of audience in the Police Courts, the County Courts, and at some Quarter Sessions, and in interlocutory applications in Chambers in the Supreme Court, but they have no right of audience at the trial of actions in the Supreme Court, Assize Courts, the Mayor's Court of London, and various local Courts. In actions fought in the latter Courts the parties must be represented by counsel instructed by solicitors, or conduct the case themselves. It is common for counsel to be instructed in other Courts in cases of importance.

Authority of Solicitors and Counsel in Litigious Business

Solicitors or counsel retained in an action can, on behalf of their clients, make formal admissions, effect a compromise, or consent to an order in connection with the case. A compromise so effected will, if not going beyond the subject-matter of the action, bind the client even though made contrary to his express instructions; but the client would have a right of action against his solicitor, though not against his counsel, for so doing. A consent order or a compromise binding on the client may be set aside by the Court on any ground which would invalidate an agreement between the parties, but in so doing the interests of third parties, if concerned, must be protected. The retainer to conduct an action is a continuing authority until the matter is disposed of, unless determined by the client or the solicitor or by the death or incapacity of either, and the solicitor, in most cases, cannot withdraw unless for good cause. A party to an action changing his solicitor must file a notice thereof in the office of the Court, and should serve a copy on his opponent. Co-plaintiffs in an action must be represented by the same solicitor, but co-defendants may be separately represented.

Authority of Solicitor in Conveyancing Business

Where a solicitor acting for the person to whom the consideration money is to be paid produces a deed having in its body or by endorsement a receipt executed or signed by his client, the deed is a sufficient authority for the person liable for the consideration to pay over the money to the solicitor without further authority. Trustees are empowered to appoint a solicitor to receive money on their behalf under these conditions, as also to receive money due under policies of assurance. A solicitor is not the general agent of his client, and in non-contentious business, and apart from the question of "holding out", his authority is limited by the terms of his retainer.

Solicitors for trustees are not the agents of the trustees for the purpose of receiving notice of encumbrances on the trust estate.

Dealings between Solicitor and Client

Contracts and gifts between solicitor and client have always been jealously regarded by the law on account of the confidential position which the former occupies. In contracts for purchase of property wholly unconnected with the matter on which he has been or is employed, the solicitor,

no doubt, is in much the same position as a stranger, but in other cases, owing to his personal influence over his client and his opportunities of acquiring knowledge as to the value or condition of the property, his duty is to advise his client as if the purchaser were a third person. All matters affecting the value of the property known to the solicitor but unknown to the client must be disclosed, and if the contract is impeached, it is for the solicitor to prove that there has been no abuse of influence or confidence in connection with the affair. A solicitor must not purchase the property of his client without disclosing that he is the buyer. A solicitor selling his own property to his client must disclose his interest; if he lends to or borrows money from his client, the securities taken or given must not contain any unusual powers in favour of the solicitor or restrictions unfavourable to his client.

A solicitor having the conduct of a sale by order of the Court cannot buy unless by leave of the Court. The ordinary laws of agency apply as to any secret profit made by a solicitor in the course of his employment for a client. A gift otherwise than by will made to a solicitor by his client whilst the relation of solicitor and client or any influence from it exists is invalid, and will be set aside by the Court unless made under competent independent professional advice. In *Liles v. Terry and wife* (1895) a voluntary conveyance of leasehold premises by a client to her solicitor in trust for the client for life, and after her death in trust for the solicitor's wife, who was the client's niece, made without independent advice, was declared void. If the client, having a knowledge of his right to have the gift set aside, confirms or acquiesces in the gift after the confidential relationship has ceased to exist, the transaction will be held binding. A solicitor to whom a gift has been made by will prepared by himself must prove the testator's knowledge, capacity, and approval of the contents of the will, and the burden of proving undue influence will be thrown on the opposing party. If a testator desires his solicitor to benefit largely under his will, the document should be prepared by another.

Liabilities of Solicitors

A solicitor is liable to his client for negligence. Accordingly, he has been held liable for ignorance or non-observance of rules of practice, for gross mistakes in advising on a cause of action and the appropriate procedure, and for neglect in the preparation of a case or in appearing therein. A solicitor is not liable for negligence when acting on the instructions of counsel, if the facts of the case have been properly submitted for counsel's advice, nor is he liable for mistakes in difficult points of law. In conveyancing business a solicitor has been held liable for negligent enquiry into title, for negligence in drawing a conveyance or agreement, for negligent advice given to trustees touching the investment of trust funds, and in many other ways. Generally it may be said that an action against a solicitor for negligence should be very carefully weighed. The liability of a solicitor for misappropriation and other criminal offences does not differ from that of other persons, save that he is subject to the further penalty of being "struck off the Rolls", or suspended for a time from practice, on report of the Statutory Committee of the Law Society to the High Court for misconduct. Solicitors are liable on their personal undertaking. Some nice points of construction at times arise as to whether undertakings given by solicitors are personal or merely bind their clients. It is impossible to lay down general rules as to this, each case depending on its merits, but, generally speaking, when the person receiving the undertaking may be said to rely on the professional position of the solicitor giving it, the undertaking will be held to be a personal one. Solicitors, being officers of the Court, may be summarily ordered to fulfil their undertakings, pay any losses incurred by their client through their negligence, or hand over moneys or deeds in their possession belonging to their client. Applications for such an order may be made to any judge of the High Court. The orders of the Court may be enforced by attachment and imprisonment.

Solicitors' Remuneration

Solicitors' claims for remuneration for work done in their professional capacity are subject to several statutes passed in the interests of their clients, the most important being the Solicitors' Act, 1843 and 1870, the Solicitors' Remuneration Act, 1881, and the orders made thereunder.

A solicitor's charges may be based on a special agreement or on usual charges. A solicitor cannot, though the client may, rely on a special agreement unless in writing, signed by the party to be charged. As regards charges for contentious work under an agreement, the client, before paying, is entitled to have the agreement examined and allowed by a taxing officer of the Court, who may require the opinion of the Court or a judge to be taken thereon if it does not appear to him fair and reasonable. The Court has power to reduce the amount payable or to cancel the agreement and

have the costs taxed in the usual way. Payment is enforced by motion or petition in the Court where the work was done. A provision in such an agreement that the solicitor shall not be liable for negligence is void, and the agreed payment must not be a share of or a commission on the amount recovered.

Agreements between solicitor and client as to the amount to be paid for non-contentious work are governed by the Solicitors' Remuneration Act, 1881. The agreement must be signed by the party to be bound thereby or his agent in that behalf; the payment may be a gross sum or by commission, percentage, salary, or otherwise. The agreement may be sued and recovered on, impeached, or set aside in like manner and on the like grounds as an ordinary agreement. Where the client objects to the agreement as unfair and unreasonable, the Court may, for good cause shown, refer the agreement to the Taxing Master for his certificate, and make such order as then seems just.

The usual charges in contentious business are regulated within certain limits by a scale fixed by Rules of Court. In the High Court there is a distinction between "party and party" costs and "solicitor and client costs". In taxing the former bills only those charges will be allowed which appear to have been necessary and proper for the attainment of justice or for defending the rights of any party. In most cases, therefore, a successful litigant, though he gains a verdict with costs, must pay his solicitor some portion of his charges. In the County Court all costs are allowed on the same scale, unless the judge otherwise orders; but the registrar has a discretion, when the amount recovered is less than the amount claimed, to allow the plaintiff's solicitor costs on the latter amount. In *re Langlois and Biden* (1890) the plaintiff claimed £15 on a promissory note; but as it appeared in the action that he had only lent £5 on it, judgment in his favour was limited to that amount with costs. The costs between "party and party" were taxed at £2, 13*s.* 6*d.* The plaintiff's solicitor's bill amounted to £9, 14*s.* 6*d.* This was taxed on the client's application, and £2, 13*s.* 6*d.* allowed as on the previous party and party taxation. On appeal to the judge the Master was directed to review the taxation. On further appeal the Divisional Court supported the Master's decision; but the Court of Appeal reversed this, and decided that the Master had a discretion to allow costs on the higher scale, that he had not exercised his discretion, and that the case must be referred back to him for that purpose.

The mode of remuneration in non-contentious business is governed by the Solicitors' Remuneration Act, 1881, and the Remuneration Order, 1882, made thereunder, and as to transactions concerning land registered under the Land Transfer Acts by the Land Transfer Order of 1898. The Remuneration Order, 1882, fixes a scale charge calculated by a varying percentage on the amount of the annual rent (1) for leases or agreements, for leases at a rack rent (other than mining or building leases); (2) for conveyances of freehold land, building leases, or long leases not at a rack rent (except mining leases), or agreements for these leases. Remuneration for business other than the above is not fixed by scale, but Schedule II of the Order lays down rules as to the amount to be charged for drawing and perusing wills and other documents, for attendances, journeys, &c. As regards business for which the remuneration is fixed by scale a solicitor may, before undertaking the work, elect to charge (subject to Schedule II) for each item of work done, and may then charge accordingly.

A solicitor cannot bring an action for the recovery of his fees and charges until one month after he has delivered a signed bill to the party to be charged. Clients usually pay their solicitors' bills without taxation, but in trustee business and in other cases where no amicable arrangement can be arrived at the client may, on application to the Court within a month of delivery, obtain an order referring the bill for taxation. After the expiry of one month, and within twelve months, applications may be made by the client or by the solicitor, the order being subject to such conditions as the Court or judge may think proper. Under special circumstances taxation is ordered after the expiry of twelve months from the date of delivery, or even after payment or verdict in the solicitor's favour. In contentious business applications are made to the Court in which the matter was litigated, in non-contentious business to the Chancery Division.

THE SCOTTISH COURTS AND THEIR PROCEDURE

The Civil Courts of Scotland are two in number—the Court of Session, which is the Supreme Court of the Kingdom, and the Sheriff Court, which is analogous and in many respects similar to the County Court of England. The House of Lords, which is the Supreme Appellate tribunal of the realm, is, when sitting in Scotch Appeals, a Scots Court, and therefore, strictly speaking, falls to be dealt with in treating of the Scottish Courts. As, however, its procedure when sitting

as a Scots Court in no way differs from that which obtains when sitting as an Appellate Court in English Appeals, it may be left out of account in this article.

The Court of Session

was instituted in 1532, and from the date of its institution down to the present time its sittings have never been interrupted, save when occasionally prevented by war or pestilence, and when, during the Protectorate of Cromwell from 1650 to 1661, it was superseded. The constitution of the Court has, of course, been greatly altered during this period, and the arrangement of the Courts has, as the result of successive statutes, been wholly remodelled. As now constituted, the Court of Session consists of thirteen Judges. Of these, eight are purely Judges of Appeal, and sit in two Divisions, known respectively as the First and Second Division. The two Divisions together constitute what is known as the Inner House, while the remaining five Judges, who are known as Lords Ordinary, or Judges of the first instance, constitute what is known as the Outer House. An appeal is competent to either Division from the judgment of a Lord Ordinary or, under certain reservations to be afterwards noted, from the Sheriff Court.

The Inner House

The two Divisions, which each consist of four Judges, are Courts of co-ordinate authority. The Lord President, who is also the Lord Justice-General of Scotland, presides over the First Division, while the Lord Justice-Clerk presides over the Second Division. In each, three Judges are necessary to form a quorum, though in the case of the illness or absence of a Judge from one Division, a Judge or Judges may be called in from the other Division or from one of the five Judges constituting the Outer House. When an ordinary cause originates in the Court of Session, the pursuer (or plaintiff) may, at the time when the action is instituted, select either Division he pleases to be the Court of Review in the event of an appeal being taken, either by the pursuer or the defender, from the judgment of the Lord Ordinary. But at the time when the action is brought into Court he must select one or other of the Divisions as the Court to which an appeal shall be taken, and so mark his Summons or Writ. The ultimate Division before which the case is finally heard, assuming that the judgment of the Lord Ordinary is appealed against, is therefore determined at the time the action is raised. On the other hand, in appeals from judgments pronounced in the Sheriff Court, the appellant, who of course may be either the pursuer or the defender, has his choice of Divisions, which he exercises at the time when his appeal is lodged. In all cases, however, the Lord President has power, owing to congestion or other sufficient reason, to transfer any cause from one Division to the other.

While the two Divisions of the Inner House are chiefly Courts of Appeal, they also exercise an original jurisdiction in certain classes of cases. Thus, e.g., actions of Proving of the Tenor (that is, actions the object of which is to "set up" or prove the contents of documents which have been lost or have gone amissing), Division of Commonty (that is, of lands held in common), &c., are appropriated to the Inner House. Applications to the Court to exercise its *nobile officium* (i.e. its equitable jurisdiction, whereby it interposes to modify or abate the rigour of the law, or to give a remedy where none otherwise exists) are made directly to the Inner House. Again, "Special Cases", which are a feature of Scots procedure, must be brought in the Inner House. With regard to Special Cases, it is provided by the Court of Session Act of 1868 that "where any parties interested, whether personally or in some fiduciary or official character, in the decision of a question of law shall be agreed upon the facts, and shall dispute only the law applicable thereto, it shall be competent for them, without raising any action or proceeding, or at any stage of an action or proceeding, to present to one of the Divisions of the Court a Special Case signed by their Counsel, setting forth the facts on which they are so agreed, and the question of law thence arising upon which they desire the opinion of the Court; which case may set forth alternatively the terms in which the parties agree that judgment shall be pronounced according to the opinion of the Court upon the question of law aforesaid". This mode of procedure has been found to be most useful and convenient, and is frequently adopted, especially for the settlement of questions arising upon the construction of provisions made by wills, trust settlements, and other deeds. In order that a Special Case may be presented to the Court, there must be a specific question of law involved and stated, about which there is a *bona fide* dispute between parties having and averring an interest, and the question must be one which might competently be entertained by the Court in some other form of process. Under a Special Case the Court will not answer hypothetical questions, nor give what is merely tantamount to an opinion of Counsel, by which no one would be bound. Special Cases, unless otherwise directed, are heard in the

ordinary course, and according to the usual procedure. A Special Case may be appealed to the House of Lords, but in that case the parties must have asked for and obtained a "judgment" of the Court and not merely an "opinion".

Where the Judges of a Division are equally divided in opinion upon a question of fact or upon a question of law not involving any legal principle of importance, the case may be reheard before the Judges of that Division, with the addition of such other Judge or Judges as may be necessary to bring the number up to five, and judgment will be pronounced in accordance with the opinion of the majority of the Court so constituted. In other cases of equal division, or in cases of difficulty or importance, the case may be determined by obtaining the written opinions of three other Judges, who have the printed papers in the cause laid before them, or by a rehearing before the Division and such other Judges as may be necessary to bring the number up to seven. In cases of great difficulty, novelty, or importance, the whole Court of thirteen Judges may be consulted upon questions of law stated in writing, or (which is more usual) the case may be reheard before the whole Court.

The Outer House

Ordinarily an action originating in the Court of Session is brought, in the first instance, before one of the five Lords Ordinary who sit in the Outer House. These Judges have co-ordinate jurisdiction, and the pursuer has the choice of the particular Judge whom he elects to try his case. The selected Judge alone can consider and dispose of the cause, though the Lord President has the power, as in the case of the Divisions, to transfer any cause from one Lord Ordinary to another. Certain causes are, however, appropriated to particular Judges. The Junior Lord Ordinary, who is known as the Lord Ordinary on the Bills, has exclusive jurisdiction in summary petitions not incident to pending actions, and as Lord Ordinary on the Bills during Session he performs the whole business of what is known as the Bill Chamber. Among the applications competent in the Bill Chamber are those for *fiats* of imprisonment under the Personal Diligence Act, for letters of arrestment and loosing of arrestment, for letters of inhibition and of ejectment, &c. The Lord Ordinary on the Bills has further conferred on him statutorily jurisdiction in sequestrations, in summary applications connected with admiralty causes, in railway and canal valuation appeals, and in applications connected with commissions from the English and Irish Courts. In vacation the Lord Ordinary on the Bills has a statutory jurisdiction to dispose of various other petitions and applications, as representing the Court of Session: and in a few well-defined classes of petitions (e.g. for appointment of interim officers) the *nobile officium* of the Court may, on the ground of urgency, be exercised by the Lord Ordinary on the Bills in vacation. The Lord Ordinary on the Bills also sits on the fifth lawful day after each box-day (i.e. two days in each of the Spring and Autumn vacations and one in the Christmas recess, on one or other of which papers ordered by the Court, or by the Lords Ordinary, towards the close of the preceding Session, are usually appointed to be lodged) for the purpose of granting or recalling decrees in absence, disposing of motions in regard to the preparation of the record, granting commission and diligence, &c. The Second Junior Lord Ordinary exercises jurisdiction in Teind Causes—teinds or tithes, in their original signification, being the tenth part of the annual produce of the land and industry of the laity, which the clergy began, in the earlier ages of the Church, to claim and receive as a fixed provision for the maintenance of religious instructors. To him also lie appeals from the Sheriff in cases relating to church building and repairing, &c. To the Third Junior Lord Ordinary is assigned the Outer House jurisdiction in Exchequer Causes. There are also Special Courts for the disposal of certain definite classes of cases, such as those for hearing and determining appeals against *Valuations* of lands and heritages, those for hearing and determining appeals in *Registration* cases, and those for trying and deciding *Election Petitions*.

Sittings of the Court

The Winter Session lasts from 15 October till 20 March, with an adjournment of a fortnight at Christmas and a week (usually the second) in February. The Summer Session lasts from 12 May till 20 July. The Court has power to adjourn over any public holiday, and it does not sit on the half-yearly term days, namely 15 May and 11 November. Nor does the Court of Session sit on Mondays during terms. Roughly speaking, the Court sits on only thirty-one weeks out of the fifty-two, or about three-fifths of the year.

The Judges

The Judges are all, in modern practice, members of the Faculty of Advocates, and, as Judges, are Senators of the College of Justice in Scotland, of which the Advocates, Writers to the Signet, and Solicitors are ordinary members. The Judges are

entitled to the prefix "Honourable" and to the courtesy title of "Lord". On being elevated to the Bench, the Judge, if the proprietor of landed property, may, and frequently does, take his judicial title from the name of his estate, as e.g. the Hon. Lord Kincairney, though in appending his signature, either to public or private documents, he does not make use of his judicial title. The Lord Advocate for Scotland, unlike the Attorney-General for England, is invariably sworn of His Majesty's Privy Council, and Judges who are Peers of the Realm, or who are members of the Privy Council, are, of course, accorded the style of "Right Honourable". Judges after their retirement continue to be styled "Lord", and a Judge's wife or widow is entitled to be addressed as "Lady". Judges, both in private life and on the Bench, are addressed as "My Lord".

Jurisdiction

As regards persons, the Court has a general jurisdiction over all persons whose domicile is in Scotland, or who have resided in Scotland for forty days prior to the raising of the action, or who, having resided during that period, have not since been absent for forty days. Jurisdiction by domicile does not, however, extend to actions relating to heritable (or real) property, to give jurisdiction in which the property must itself be situated in Scotland. The Court has also jurisdiction over persons resident in Scotland for however short a time, provided such persons have been personally "served" with the action, and the cause of action has arisen in Scotland. Another ground of jurisdiction is the possession by the defender of heritable (or real) property in Scotland (except in questions of *status* and in actions of declarator and reduction), though he be neither resident in Scotland nor in it at the date of the citation. The possession of moveable property is not in itself sufficient to confer jurisdiction, but to this rule there is the exception that if the defenders have moveable (i.e. personal) property in Scotland in the hands of another (not a mere servant), he is rendered liable to the jurisdiction by the arrestment of his property, a ground of jurisdiction borrowed from the law of Holland. Civil actions against foreigners (in which category, for the purposes of jurisdiction, Englishmen are included) must in general be brought in the Court of Session, though under a recent Act, which will be afterwards noted, the Sheriff Court has now a limited jurisdiction. As regards causes, the general rule is that the Court of Session has jurisdiction, original and appellate, in all civil causes cognizable in a Scottish Court, except where by Statute it is expressly excluded. It can set aside or suspend the judgments of all inferior Courts, unless where that power is by Statute denied it: and even where the right of appeal is expressly excluded, the Court of Session may set aside the judgments of inferior Courts where there has been excess of jurisdiction, and it has power to compel a Judge of an inferior Court to exercise his jurisdiction and his judicial functions. The Sheriff Courts (Scotland) Act of 1907, of which mention has already been made, has very greatly extended the jurisdiction and powers of the Sheriff Courts, but in certain classes of case the Court of Session still has privative jurisdiction. Of these the more important are those relating to *status*, including actions of declarator or nullity of marriage, of divorce or of separation; and actions of reduction, or those to set aside a written deed on the ground of fraud or error. Such cases are competent only in the Court of Session; but with regard to certain others, their competency in the Sheriff Court depends on the value of the subject in dispute.

The Court of Session is, of course, a purely Civil Court, and its jurisdiction is therefore wholly excluded in criminal causes, or causes in which the Court is required or authorized to grant a warrant against the defender for his imprisonment or the imposition of a fine. Sentences and proceedings of the Church Courts cannot be reviewed by the Court of Session, unless the Ecclesiastical Court has acted maliciously and outwith its jurisdiction, though even then the Court will not interfere unless some civil right has been invaded. The Court has, however, express statutory jurisdiction in causes relating to teinds, the disjunction and erection of parishes, ecclesiastical buildings, &c., in connection with the Established Church of Scotland. Where the value of the cause does not exceed £50 the jurisdiction of the Court of Session is excluded, and actions of removing or ejectment must be raised in the Sheriff Court, though they may in certain cases reach the Court of Session, either by way of appeal, suspension, or reduction. Finally, the Judges of the Court of Session have power to make, under what are known as Acts of Sederunt, rules of procedure for the conduct of causes, either in the Court of Session or in the Sheriff Court, which have the force of Statutes.

The Parties to an Action

Before any action is raised, the practitioner must consider whether his client is the proper person to raise it, and against what person or persons it should be brought. To maintain an action both title and interest are necessary, by the former

of which is meant the formal legal right, and by the latter some benefit which will accrue from asserting the right or preventing its infringement. The cases are rare where there is a title but no interest, for the interest need not be pecuniary, and may be the interest in any right recognized by law. There may, however, be an interest where there is no title, for while in general an interest implies a title, it does not necessarily confer a title to sue a particular person or action. Thus, to take a simple example, an unsuccessful candidate for an office cannot sue an action of damages on the ground that the successful candidate was ineligible; and the creditor of a deceased person cannot maintain an action to have a discharge granted by the deceased reduced or set aside on the ground that it was obtained from him by fraud. In such cases there is no title to sue, though there is an interest recognized by law which might by other means be made effectual. In another class of cases there is no title, because there is no interest which the law recognizes as sufficient to support an action, as in cases of damages too trifling to be recognized by law, or where the damage is purely consequential. But where there is an express stipulation in a contract in favour, or intended for the benefit, of a person who is not a party to such contract or deed, he is entitled to sue for implement of the stipulation or for damages in respect of its breach. An agent or other representative has a title to sue on behalf of another person if he has a mandate or commission to sue, in which case he is in Scots law known as a mandatary. In actions with reference to partnership property, contracts or rights as against third parties, all the partners, or at least a majority, or those empowered by the contract of copartnership to sue, must concur in the action to make the title complete. So in general in actions by trustees, all the trustees or a quorum, or where no quorum is specified, a majority, must sue. Persons injured by the same act may sue a joint action of interdict or damages, though in such cases there must be separate conclusions and, where there is a jury trial, separate issues. But several pursuers who complain not of the same but only of similar wrongs must bring separate actions, even though the defender and the ground of action be the same.

Wives, pupils, minors, and insane persons are, with certain exceptions, incapable of suing alone, and require the consent of their husbands, tutors, and curators respectively to enable them to do so. A wife may, however, since the Married Women's Property Act of 1881, sue for the income of her moveable (or personal) estate as well as for the rents and produce of her heritable (or real) estate in Scotland without her husband's concurrence as her curator; and she may also sue with reference to any property from which her husband's *jus mariti* or right of administration is excluded. She may also sue personal actions which affect her alone, and if separated or divorced she may, of course, sue as though she were unmarried. (With reference to pupils, minors, and insane persons, see Chapter I of this Part.) Bankrupts and persons divested of their estates have no title to sue. (See Chapter XI of this Part.)

Persons who, on account of their circumstances, are unable through poverty to sue or defend an action may obtain the benefit of the Poor's Roll, on making a declaration to that effect and obtaining a certificate from the minister and two elders of the parish as to their knowledge or belief of its truth. The applicant's case, whether he be pursuer or defender, is then remitted to two advocates, who act as reporters on *probabilis causa litigandi*, who hear the statements of the parties and decide whether in their opinion the applicant has a prima facie case with a reasonable prospect of being able to establish his averments. If favourable, the applicant is then duly admitted to the benefit of the Poor's Roll, and a counsel and a solicitor, who act gratuitously, are then appointed to conduct his case.

Divisions of Actions

Actions are divided into four main classes—declaratory, reductive (or rescissory), petitory, and possessory. A declarator, which Lord Brougham once regretted did not exist in English practice, is an action in which the pursuer seeks to establish the existence of a certain right which he claims to possess, and which has been questioned or denied, without claiming that anything should be done by the defender. Petitory or possessory conclusions may, however, competently be added to the declaratory conclusions in order that effect may be given to the right declared. This form of action, especially when combined with petitory or possessory conclusions, has been found of immense service in practice, and is very largely made use of in Scots legal procedure. Thus in the form of a declarator a person may establish his right to the salmon fishing in a river, in which case the action usually contains conclusions for interdict, to prevent others fishing for salmon once the pursuer's right has been established. So a right of way may be established either by the public or by a person who avers that he possesses a right as a servitude, or the proprietor of lands may obtain declarator that no right of way over or through his property exists. Again, an action of declarator

may be raised to decide the question whether the pursuer is or is not a partner in a certain firm, or whether certain persons (e.g. the parents of the pursuer) were or were not legally married according to the law of Scotland. In short, there is practically no legal right, or even apprehended dispute or question regarding the validity or priority of such right, which cannot be made the subject of a declaratory action, provided only such right is denied and all persons interested, or who may be interested, can be, and in fact are, duly made parties to the action by being called into Court as defenders.

Rescissory actions or reductions, as they are known in Scots practice, are those whereby deeds, decrees, or other written documents, or illegal acts by any body corporate or society of men (as, e.g., the election of magistrates or other public officials), may be set aside and declared void. Such actions, which may have petitory or possessory conclusions attached to them, are in the nature of declarators, because rights may be declared in two ways—*affirmatively*, the right itself being declared to be good and valid and sufficient to exclude any other right; or *negatively*, by reducing and annulling any pretended right which might be founded upon in prejudice of the pursuer's right.

Petitory actions derive their name, not from the fact that the Court is asked to do something (which is the case in all actions), but from the fact that the Court is asked to compel the defender to do something—something which does not arise out of mere possession on the defender's part. Such actions, therefore, include all actions (except declarators and reductions) which are founded upon an absolute right, whether the conclusions of the action are for (*a*) payment, as in actions for debt or damages, or (*b*) for a decree *ad factum præstandum*, i.e. for actual performance of a specific obligation, such as the delivery of a horse or motor car, or the signing of a contract, &c. In regard to such actions Scots law differs from that of England in respect that in Scotland if specific implement of the obligation is practically possible it may be enforced in all contracts, except a promise of marriage. If, however, specific implement be impossible, the proper remedy is an action of damages. In actions of damages for a single breach of contract, it is an important rule that the total damage, though future, must be concluded for in a single action. If, however, there are successive breaches, there may be successive actions.

Possessory actions are grounded not upon absolute right but upon the fact of possession, for which, as regards heritable (or real) subjects, seven years' possession on a written title suffices. Such actions, which are similar to the interdict of the Roman law, are used when it is desired to attain, retain, or recover possession of the subject of the action. Interdicts in Scots law may be founded on the absolute right as well as on the fact of possession. As, however, in actions of interdict, whatever be the ground of action or the result when the interdict is made perpetual, the primary matter in dispute is the possession or use of the right and not the permanent and absolute title to it, all interdicts may be classed under the category of possessory actions. Besides interdicts, the only possessory actions in common use are those of removing and of maills and duties, by which in the former case the possession, and in the latter the rents and lands, are recovered from the person in actual possession by one who has the prima facie title, without proving his title. (See Chapter IX of this Part.)

Besides the formal division of actions according to the nature of the remedy, there are certain actions which differ from the ordinary type in respect of their procedure. Among these the following may be mentioned: (*a*) Actions of Count and Reckoning, which are brought wherever there is a right to demand and a liability to render an account, as, e.g., between a ward and his guardian, between partners, or between a principal and his agent. The conclusions of the summons (or writ) in such actions are (1) for production of accounts in order that the balance due to the pursuer may be ascertained; (2) for payment of stated sum as such balance or such other sum, more or less, as shall be ascertained to be the true balance; and (3) failing production of an account, for payment of a specific sum, usually fixed at more than the balance supposed to be due. (*b*) The action of Furthcoming, by which the moveable (or personal) property of a debtor, arrested (i.e. attached) in the hands of a third person, is made "furthcoming" and transferred to the arrester, who is the pursuer of the action. (*c*) The action of Multiplepoinding, similar to the English interpleader, by which competing claims of two or more persons to the same fund or moveable (i.e. personal) estate in the hands of a third person, which is called the fund *in medio*, are determined. The pursuer is called the raiser of the action, and is always the holder of the fund. When he raises the action on his own account, either because he alleges he has right to the fund, or because he desires that the competing claims made upon the fund should be determined and he himself exonerated from all liability with reference to the fund, he is called the real raiser; when the summons is raised in his name by a competing claimant, he is called the nominal raiser. The defenders are all those who have or may have claims upon the fund

in medio, and are called, if they lodge claims, claimants and defenders. As the foundation of this action is the existence of two or more adverse claimants to the same fund, it is a general rule that it is incompetent to raise such an action unless the raiser or pursuer is able to allege and establish that he is subject to what in Scots legal phraseology is known as "double distress", by which was originally meant double diligence, but by which is now meant two or more conflicting claims actually made or capable of being made against the fund which is in his possession. To this general rule, however, there is the exception that trustees in possession of a trust estate do not require to allege double distress, and may raise the action in order to obtain judicial exoneration, either because there are conflicting claims on the trust funds, or because doubtful questions as to the persons entitled to participate have arisen, even although no actual conflicting claims have been made.

The Summons or Writ

A summons is a writ in the Sovereign's name, passing under the King's Signet and signed by a Writer to the Signet, calling upon the defender to answer in the Court of Session the claim made upon him by the pursuer. The ordinary type of summons runs as follows:—

GEORGE V. by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith: To ..... messenger-at-arms, our Sheriffs in that part, conjunctly and severally, specially constituted, Greeting: WHEREAS it is humbly meant and shewn to Us by our lovite *A.* (*insert name and designation*)—*Pursuer;* against *B.* (*insert name and designation; and if defender is not designed as resident or carrying on business in Scotland, state his known residence or place of business, or set forth that his residence and place of business* (*if he be engaged in business*) *are unknown to the Pursuer*)—*Defender*, in terms of the Condescendence and Note of Pleas in Law hereunto annexed: THEREFORE the Defender Ought and Should be decerned and ordained by decree of the Lords of Our Council and Session to make payment to the Pursuer of the sum of ..... sterling (*where any liquid document of debt is libelled on, whether bond, bill, or other document, as the case may be, set it forth as shortly as possible, describing it merely by its date, and the names of the parties by and to whom it was granted*), with the legal interest thereof from the ..... day of ..... until payment, together with the sum of (£50) sterling or such other sum as Our said Lords shall modify, as the expenses of the process to follow hereon: conform to the laws and daily practice of Scotland used and observed in the like cases, as is alleged: Our Will is HEREFORE and we charge you that on sight hereof ye pass and in Our name and authority lawfully summon warn and charge the said Defender, personally or at his dwelling place (*or if more than one*, the said Defenders personally or at their respective dwelling places) upon seven days warning (*or if the Defender is in Orkney, Shetland, or other Island of Scotland, or furth of Scotland*, upon fourteen days warning; *and if he is furth of Scotland, add* by delivery of a copy hereof at the office of Edictal Citations in the General Register House, Edinburgh) to compear before the said Lords of Our Council and Session at Edinburgh, or where they may happen to be for the time, the ..... day of ....., in the hour of cause, to answer at the instance of the Pursuer in the matters libelled: That is to say, to hear and see the premises verified and proved and decree and sentence pronounced by our said Lords, conform to the Conclusions above written, or else to allege a reasonable cause to the contrary, with Certification as effeirs:—According to Justice as ye will answer to Us thereupon: which to do We commit to you, conjunctly and severally, full power, by these our letters, delivering them by you, duly executed and endorsed, again to the bearer.

Given under Our Signet at Edinburgh, the ..... day of .....

(Signed) C. D., *Writer to the Signet.*

In summonses concluding for payment of money, but in such writs only, it is competent to insert a warrant (or will) to arrest the moveables, debts, and money belonging or owing to the Defender (as, e.g., the money lying at his credit on current account with a bank) until he find sufficient caution (or surety) for payment of the money concluded for, should the result of the action be a decree in favour of the pursuer. It is also competent to insert in the summons a warrant of inhibition, whereby the Defender is inhibited or prohibited from selling, burdening, alienating, or otherwise affecting his lands or heritages (i.e. real estate) to the prejudice of the Pursuer. But to render either warrant competent the summons must contain pecuniary conclusions other than the conclusion for costs, or expenses, as they are called in Scotland. Any solicitor entitled to practise before the Court of Session may sign a summons, provided that if such solicitor is not a Writer to the Signet, the summons must be signed on the last page by a Writer to the Signet in testimony of its "being written to the Signet", who is entitled to a fee of 2*s.* 6*d.* in respect thereof, but who incurs no responsibility thereby.

To the summons a condescendence, or statement of claim, is attached, which succinctly contains in articulate paragraphs the allegations of fact on which the Pursuer relies in support of his claim: argumentative or scandalous matter may be struck out by the Court. To the condescendence again

are subjoined the pleas in law, which consist of a concise and specific note of the legal proposition or propositions on which the action is to be maintained, set forth in distinct and separate propositions without argument, and in as few words as may be consistent with clearness and absence of ambiguity.

Citation or Service of the Summons

After the summons has been prepared, the next step is service, which in Scotland is called citation, and which is the commencement of the action, after which it "depends" before the Court. Citation may be effected in one of three ways—(*a*) personally, by delivery to the defender by a messenger-at-arms or other qualified officer of a copy of the summons, calling upon him to appear within the *induciae* (or days of warning); (*b*) at the defender's dwelling house, by leaving a copy of the summons with anyone who may answer the messenger's knock, or by affixing to the door or thrusting within the keyhole a copy of the summons, if no one answers to the messenger's summons; or (*c*) by means of a registered letter containing a copy of the summons sent to the known residence or place of business of the defender, or to his last known address if it continues to be his legal domicile or proper place of citation, or to the keeper of Edictal Citations in cases where the summons is required to be sent to that officer. A certificate stating the mode in which the citation has been made is returned by the officer who makes it, or by the solicitor in the case of citation by registered letter, and is called the execution of the citation. A citation may of course be invalid, and after a decree in absence may be reduced or suspended by the defender on that ground, but if the defender actually appear by lodging a notice of appearance, he cannot subsequently object to his citation on the ground that it was irregular or invalid.

After the expiry of the *induciae*, a summons may be "called" on any day during session or box-day during vacation. A list of the cases which are called on any day during session is printed and published, and if the defender wishes to defend the action he must enter appearance either on the day the summons is called, or on either of the two following days. If appearance be not entered for defender on any of these three days, the case is put upon the roll of undefended causes, and decree in absence is thereupon granted against the defender. If, however, defender duly enters appearance, he is thereupon entitled to borrow the process, which he may retain for twelve days. At the expiry of that time, if he still intends to defend the action, he must lodge his defences to the action. After defences have been lodged, any decree which the pursuer may obtain is a decree *in foro*, even although such decree have been pronounced owing to the default of the defender. A decree in absence may be recalled on payment of £2, 2*s*. to the Pursuer, but a decree *in foro* cannot be recalled, and can only be appealed against. In certain cases, however, a decree in absence is not granted without proof, even if defender have failed to lodge a notice of appearance. In declarators of marriage, for example, and in actions of separation or divorce, the Court requires proof before granting decree. After the lapse of ten days from its date a decree in absence may be extracted; but before extract the account of expenses must be taxed by the Auditor of Court. After the judgment has been extracted it may be made operative against the defender.

The Defences,

like the condescendence, are in the form of articulate answers to the articles of pursuer's condescendence, either admitting or denying the facts stated, but containing no argument. A note of the pleas in law on which the defender relies in support of his case is added to the defences. Where necessary, a separate statement in consecutive articles of the allegations of fact on which the defender founds may be lodged by the defender, although no fixed practice exists in which it is proper to make such a statement. Where two or more defenders have the same defence, they may lodge a single defence for all or separate defences, adopting and repeating the defence stated by the leading defender. When, however, there are separate actions against different defenders, they must each lodge a full separate defence, though their defence be the same. Defences must be signed by counsel, and in some cases the signature of the party as well as that of his counsel should be added, as where serious statements are made as to moral character. Defences are of two kinds—dilatory or preliminary, or those which have the effect of absolving the defender without prejudicing the Pursuer's right to bring a new action; and peremptory or positive allegations going to the root of the action and which, if sustained, extinguish either the ground of action or its effects. Declinature of the Judge (on the ground of interest in the subject-matter in dispute, or of relationship to either of the parties), or relevancy of the action as laid, or to the pursuer's title to raise the action, or to the formality of the execution of the summons, or of *lis alibi pendens* (i.e. that the subject-matter of the action and between the same parties is already pending before a competent

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Court) are examples of the former class, while a defence of *res judicata* (i.e. that the subject-matter of the action as between the same parties has already been adjudicated on by a competent Court), or that the claim of the pursuer has undergone prescription or limitation, are examples of the latter. After defences have been lodged it is competent for the Lord Ordinary to allow or order a revisal of the pleadings, upon just cause shewn. The summons, with the pursuer's condescendence and pleas in law, and the defences, together constitute the pleadings in the case, and when combined and printed in one document are known as the Record. After the pleadings have been revised and adjusted by the parties the record is formally "closed", and thereafter no amendment or alteration of the respective pleadings of the parties can take place without the leave of the Court. At the closing of the record the parties may renounce probation, and the case is then debated on the pleas in law. If probation is not renounced, then the case is set down for trial by proof before the Judge, or if the case be one appropriate for Jury trial, as, e.g., in actions of damages, "issues" (i.e. the precise question or questions which the Jury have to determine) are settled between the parties and the day of trial fixed.

Incidental Procedure

Having very briefly sketched the mode in which the record in an ordinary action is made up, closed, and sent to the roll for debate or for proof, a word may be added explai ing the principal motions of ordinary occurrence in an action.

Motion to Sist Mandatary.—A litigant resident out of Scotland is, as a rule, required to provide a mandatary resident within the jurisdiction of the Scots Courts to be responsible to the Court for the conduct of the cause, and to the opposite party for expenses (i.e. costs) in which the mandant may be found liable. The opposite party may at any stage of the cause move for an order to compel his opponent to sist (or introduce as a party to the cause) a mandatary, but it is in the discretion of the Court to grant or refuse to grant the motion. An important exception to the general rule is that when the litigant is resident in England or Ireland he is not required to sist a mandatary (unless other circumstances than his absence from Scotland render it proper), because under the provisions of the Judgments Extension Acts a judgment (or decree, as it is called in Scotland) granted in Scotland can now be enforced against him in England or Ireland. The rule as to sisting a mandatary applies both to defenders and pursuers, but the discretion of the Court is wider in the case of the former, and the tendency has been in recent years not to require a mandatary in the case of a defender.

Recovery of Documents.—A motion for a commission and diligence to recover writings and documents in the possession of the opposite party or of third parties (who in Scotland are called "Havers", because they "have" the documents) is competent either before or after the closing of the record, and is the counterpart of the English motion for discovery. The usual stage, however, at which the motion is made is after the record has been closed and a proof ordered. There is in Scots practice nothing analogous to the English suit for the perpetuation of testimony, though where a competent action, such as a declarator, is brought, proof may be led *ex parte* and documentary evidence recovered, though the action be undefended. When a haver is resident in England or Ireland it is now competent for the party desiring the Commission to apply to any of the Superior Courts of either country for a rule or order to compel him to appear and be examined, and to produce any documents or writings mentioned in the rule or order, for disobeying which the haver is liable to the penalties for disobedience to a writ of subpœna in England or Ireland. When the documents are not required before the trial the Court or Judge may issue a special warrant of citation to compel such witness to attend at the trial and to bring with him the necessary documents, and if such warrant be disobeyed, the person in default may be proceeded against as if he had disobeyed an order of the English or Irish Court, as the case may be. The general rules as to the questions which may be put to havers, the conduct of the Commissioner, and the kind of documents which may be recovered under a diligence, do not materially differ in Scotland from those of England.

Motion to Amend Pleadings.—Under a recent Act of Sederunt (which is equivalent to the English Rules of Court) of 20th March, 1907, the Court possesses the most ample powers of permitting amendments, whether of amending the instance and the addition of parties, of altering or increasing the Conclusions of the Summons, or of increasing or altering the remedy which is sought. In short, it may be said generally, any amendment of the summons or writ which may be necessary for the purpose of determining in the existing action or proceeding the real question in controversy between the original parties or those whom it may be found necessary to add may be allowed, subject to such conditions as to expenses as the Court may judge proper, notwithstanding that in consequence of such amendment the original parties to the action may be altered, increased, or reduced

in number or character, or that a larger or different remedy than that originally concluded for is thereby sought. The amendment may be made at any stage of the cause before final judgment is pronounced.

Motion for Judicial Remit or Reference.—In cases which require for their decision the observation or opinion of persons with special skill, such as engineers, accountants, architects, valuers, surveyors, builders, and others, a motion may be made for a remit to such persons to report to the Court, and such remits are often made by the Court of its own motion. The subjects remitted are matters of fact requiring skilled observation or matters of opinion falling within the special department of the reporter: a matter of law cannot be made the subject of remit, since a Judge cannot delegate his duty to decide the cause which pends before him. A remit, however, may be made to ascertain the law of another country, which in the case of England or Ireland is usually done by a case stated for the opinion of one of the Superior Courts of these countries. Judicial remits, if made by the consent of the parties, bind such parties to the conclusions of the report on the matter remitted, provided the report be complete and final.

A judicial reference, on the other hand, is an agreement by the parties to a cause to refer the whole or a certain part of matter in dispute to the decision of someone other than the judge before whom the action depends. The referee has exclusive power to determine what pleadings are necessary, if any, and their form, and also what proof is admissible, and to decide its effects. His award should be conclusive and final, deciding both the facts of the case and the law applicable to them. His award cannot be reviewed by the Court on its merits, and it can be challenged only on grounds similar to those on which the decision of an arbiter is challengeable, such as that the referee has exceeded his duty, or that his award has been tainted by falsehood, bribery, or corruption. After the referee has given his award, it is necessary, in order that effect may be given to it, that the Court should interpone its authority, which it does by giving judgment formally in terms of the award.

Motion to Abandon and Disclaim.—An action "depends" as soon as the summons has been executed. After that stage the pursuer cannot withdraw from it by an extrajudicial act, and must, if he desires to avoid a decree of absolvitor (i.e. a judgment absolving the defender from the conclusions of the summons), proceed with it, or abandon it with the sanction of the Judge according to form. The pursuer may abandon the cause at any time, but after the record is closed, and before the trial, he can do so only after paying the defender's costs; and after the trial has begun, he can do so only by leave of the Judge and on payment in full of defender's costs within a certain stated time, failing due payment of which the defender becomes entitled to decree not merely of dismissal of the action but of absolvitor.

While abandonment is the only mode by which a pursuer, who has authorized appearance, can withdraw from an action, any party to a suit—whether pursuer, defender, complainer, respondent, claimant, or otherwise—for whom appearance has been made without his authority, can disclaim such appearance by lodging in the process a minute of disclaimer, followed by a motion to have it formally sustained by the Court. Until this minute has been lodged, the party appearing by counsel remains liable for expenses. Counsel have an implied mandate to appear on behalf of the person whose cause they plead, but a solicitor who has made an unauthorized appearance for a client is liable in the expenses both of the opposite side and of the person whom he represents.

Proof and Jury Trial

A case may be decided where it can be disposed of finally upon the preliminary pleas, or upon facts or documents which are either admitted or probative. In all other cases it is necessary that there should be an allowance of proof, since before any final judgment can be pronounced the facts of the case must first be proved. Such proof may be taken in three ways– before a commissioner appointed by the Court, before the Lord Ordinary or other Judge alone, or before the Lord Ordinary or other Judge and a jury. Under existing practice a discretion is exercised by the Court in determining what cases are and what are not appropriate for trial before a Judge or before a Judge and jury respectively. It is impossible to lay down any absolute rule on the subject, but generally it may be said that all such actions as those relating to libel or nuisance, and those involving questions of damages, are in general tried before a jury. Even where a proof is allowed it may be ordered to take place "before answer", that is, before answer as to the relevancy of the pursuer's averments. The plea of relevancy is equivalent to the English demurrer, and means that although all that the pursuer alleges is true and can be proved, he still has stated no case which entitles him to the judgment he asks. The consequence, therefore, of allowing a proof before answer is that although the facts averred in the pursuer's condescendence or defender's answers are proved, they may still be held to be insufficient in law to support the con-

clusions of the summons or of the pleas in defence, and the final decision may be against the party proving them. If, however, a proof is allowed, which is not before answer, the question of the relevancy of the action or of the defences is foreclosed. Proof before answer is commonly allowed in certain cases, instead of deciding beforehand whether the proof should be parole or whether parole proof is competent. The ordinary mode of proof before a Judge without a jury is of the whole cause on the closed record, and is regulated by the Evidence Act of 1866. The mode of taking the evidence, the manner in which the evidence is recorded, and the kind of evidence which is admissible, are the same as in England.

If the Judge decides that the proof is to be before a jury, issues are "adjusted", the pursuer lodging the issue or issues he proposes, and the defender any counter issue required by the nature of the defence. When adjusted, the issues are approved by the Judge and signed and authenticated by him. Issues after adjustment may be amended or altered on conditions similar to those which apply to amendments of the pleadings. The rules governing a trial by jury are similar to those which obtain in England in the case of similar trials.

Reclaiming Notes and Appeals

A judgment of a Lord Ordinary, whether interlocutory or the final decision of the cause, has all the efficacy of a judgment of either Division of the Court. But the Lord Ordinary's judgments or interlocutors are subject to the review of the Division of the Court to which the cause belongs or is assigned. To obtain review of the decision of a Lord Ordinary it is necessary to lodge what is known as a reclaiming note, which merely submits the interlocutor, review of which is desired, to the judgment of the Court. A print of the record must be appended to the note; in some cases it may merely be referred to. The whole interlocutors in the cause, other than that prefixed to the note, are also appended, as well as any documents referred to in argument, and the proof, if the interlocutor reclaimed against has proceeded upon a proof. Only a final interlocutor which disposes of the question in controversy between the parties, or which determines the mode of proof, can be reclaimed against without the leave of the Judge of first instance. The reclaiming note, which is intimated to the opposite party, has the effect of submitting to the review of the Division the whole of the prior interlocutors in the cause, not only at the instance of the party reclaiming, but also at the instance of any other party to the cause, to the effect of enabling the Court to do complete justice without hindrance from the terms of any prior decision or judgment. A party who reclaims cannot withdraw from his appeal without his opponent's consent, and if he fail to insist in his appeal any other party may do so as if the note had been presented at his instance. After the note has been presented it is sent to the Roll for debate and argument, after which it is disposed of by the Court either by affirming or altering the interlocutor reclaimed against.

The appellate jurisdiction of the Court consists in appeals from inferior Courts, Suspensions, and Reductions. Appeal, which is competent only where proceedings have commenced in the Sheriff or other inferior Court, is the form used when a final judgment has not been extracted, except in those cases where, a warrant being issued before extract, suspension must be used. Suspension is the mode of review when a decree has been extracted or a warrant issued upon which execution has followed or may follow, and it is desired to prevent or stay execution. It applies, therefore, only to decrees in favour of a pursuer, and not to decrees in favour of a defender, even although expenses are found due. Reduction is the mode of review of all decrees after extract, but the grounds on which decrees of the Court of Session can be reduced are limited.

The Sheriff Court

The Sheriff Court of Scotland is the analogue of the County Court of England. Unlike that Court, however, the Sheriff Court is the product of development, by a process of slow evolution from remote times, of an institution which in its inception bore little resemblance to, and in its powers and jurisdiction differed almost radically from, its modern representative. It is, however, impossible within the limits of this sketch to trace the development of the duties and jurisdiction of the Scotch Sheriff, and it must suffice to say that in Scotland the Sheriff discharges executive, administrative, and judicial functions which in England are discharged by many separate officials. We shall here consider the office in its purely judicial aspect.

The Judges

The Judges in the Sheriff Court consist ordinarily of two officials, the Sheriff and the Sheriff-Substitute. Originally the office of Sheriff was hereditary, with the result that the holders of the office, incapable of adequately performing the judicial as well as the administrative and executive duties attached to it, delegated these duties

to a depute chosen from the legal profession. These deputes seldom or never resided within their sheriffdoms, and the local judicial work of the county was entrusted by them to Substitutes who personally resided within the jurisdiction. The Sheriff-Substitute originally exercised his jurisdiction in the Sheriff's name, by whom he was appointed. Their duties, however, gradually increased, and they ultimately became, as they are now, the local Judges of first instance, the titular Sheriff gradually assuming the position of a Judge of Appeal, to whom litigants dissatisfied with the judgments of the Sheriff-Substitutes might submit their cause for review. To make a long story short, the Sheriffs and the Sheriff-Substitutes now exist side by side, the former performing the administrative and executive duties connected with the office and acting as Judges of Appeal of decisions pronounced by the Sheriff-Substitutes. The Sheriffs of the counties, with the exception of those of Lanarkshire and Midlothian, are practising advocates, and reside in Edinburgh. The Sheriff-Substitutes, who are the Judges of first instance, reside within the jurisdiction, are paid by salary, and are debarred from private practice. The Sheriff and the Sheriff-Substitute, who are both colloquially known simply as the Sheriff, have now co-ordinate jurisdiction and authority, the Sheriff-Substitute being vested with and entitled to exercise (except when statutorily debarred) all the powers, jurisdiction, and authority pertaining to the office of Sheriff. There still remains, however, as a relic of the past, the anomaly that there still exists in most cases a right of appeal from the Sheriff-Substitute to the Sheriff. As, however, the judgments of the Sheriff and of the Sheriff-Substitute possess equal authority (the value of the respective decisions being dependent upon the personal authority and distinction of the Judge himself), a judgment of the Sheriff-Substitute may (except in causes of limited value, as to which a word will be said later) be appealed direct to the Court of Session without the intervention of the Sheriff, and in some cases the jurisdiction of the Sheriff is expressly abrogated. Thus in Workmen's Compensation cases and in bankruptcy proceedings of all kinds no right of appeal of any kind is permitted to the Sheriff from the decisions of the Sheriff-Substitute. The Sheriff and the Sheriff-Substitute are both ordinarily members of the Faculty of Advocates, though under a recent statute solicitors of a certain standing are eligible for the office.

Jurisdiction

The jurisdiction of the Sheriff Court as regards subject-matter is of a very extensive character, and may be said to cover everything with the exception of questions of *status* (e.g. actions of divorce, of declarator of marriage, and of nullity of marriage, legitimation, &c.) and actions of reduction. Thus the jurisdiction with regard to moveable (or personal) rights, including actions on contracts, actions for damages, and actions relating to mercantile transactions generally, is without limit. With regard to heritable (or real) rights, the jurisdiction of the Sheriff is also practically unlimited, though in certain cases where the value of the subject in dispute exceeds £50 by the year, or £1000 in all, the action may be removed, on the motion of either party, to the Court of Session. In some cases the jurisdiction of the Sheriff is privative. Thus in questions relating to moveables, if the value of the subject or question in controversy does not exceed £50, exclusive of interest and expenses, the action must be raised in the Sheriff Court, and the jurisdiction of the Supreme Court is wholly excluded, even as regards appeal. As regards the form of action, it may be said that all actions competent in the Supreme Court are equally competent in the Sheriff Court, with the exception of actions of reduction. The ends which an action of reduction would serve may, however, be obtained in the Sheriff Court in another way, since if in any action in the Sheriff Court a deed or writing is founded upon by either party, all objections to it may be stated and maintained by way of "exception" without the necessity of bringing a reduction. In actions of removing and of ejection the jurisdiction of the Sheriff is privative, and there is no appeal in a case between landlord and tenant to the Court of Session: the review must be by way of suspension. So in bankruptcy the Sheriff has almost exclusive jurisdiction under mercantile sequestration and cessios, and by various statutes powers and jurisdiction of a peculiar and extensive nature have been conferred upon the Sheriff, as under the Presumption of Life Act, the Finance Act, the Arbitration Act, the Workmen's Compensation Act, and the Agricultural Holdings Act. As regards defenders, the Sheriff generally has jurisdiction over everyone who resides or has a place of business within the county, or who has resided within the jurisdiction for the space of forty days. He has also jurisdiction over the parties to a contract if the place where the contract is to be implemented is within the jurisdiction and the defender is personally cited. So a delict (or tort) committed within the county, combined with personal service, will give jurisdiction in an action of damages arising out of the delict. The Sheriff has further jurisdiction in all actions whose subject-matter relates to heritable property within the county, and an action of

furthcoming or of multiplepoinding may competently be raised in the Sheriff Court to whose jurisdiction the arrestee or holder of the fund *in medio* is subject, or if the fund *in medio* be itself situated within the county. A defender may also be subject to the jurisdiction if he be the pursuer in another action in the same Court as against the same party, the object being to place both parties on equal terms as if they were both living in the same sheriffdom.

Classification of Proceedings

The civil proceedings in the Sheriff Court may be divided into five classes, each distinguished by some peculiar features.

1. *Small Debt Causes*, or those in which the sum sued for or the value of the article sought to be delivered does not exceed £20, the procedure in which is regulated by the Small Debts Act, the main feature of which is that it is of the most summary or expeditious nature, and that judgment is given *viva voce* at the conclusion of the trial.

2. *Summary Causes*, which consist of actions for the payment of money exceeding £20 and not exceeding £50, except applications under the Workmen's Compensation Act and actions which are brought to compel the defender to do something, such as deliver a motor car or sign a document or contract. The main features of the procedure in such causes are that the Sheriff has an almost unlimited discretion to adopt such procedure as he thinks proper, and that there is a right of appeal from the judgment of the Sheriff-Substitute only to the Sheriff, and strictly limited right of appeal from the latter's judgment to the Court of Session. If a proof is allowed, the evidence is not recorded unless the Sheriff, on the motion of either party, so orders. As expedition is of the essence of this class of action, the Sheriff must dispose of the case without delay, by interlocutor containing findings in fact and in law.

3. *Summary Applications*, not strictly of the nature of actions, which are of a summary nature brought under the common-law jurisdiction of the Sheriff, or such as are directed by any Act of Parliament to be heard, tried, and determined "summarily". When in such cases a "hearing" is necessary, the Sheriff appoints parties to be heard by him, and without a record of the evidence (unless the Sheriff shall order otherwise) disposes of the matter summarily, giving his judgment in writing.

4. *Ordinary Causes*, by which in practice are meant all cases which do not fall under the foregoing classes, and include all actions exceeding £50 in value and all actions with conclusions *ad facta praestanda*, or actions in which the defender is asked to do something, irrespective of the value or amount sued for. The main test of an action *ad factum praestandum* is that if the judgment is given in favour of the pursuer, the defender may be imprisoned if he fail to carry out the decree of the Court.

5. *Claims under the Workmen's Compensation Act.*

The Writ

The jurisdiction and powers of the Sheriff have been very considerably enlarged, while the procedure of the Court has been altered and amended in several important particulars by the Sheriff Courts Act of 1907. Under that Act the writ by which proceedings are begun has been largely modelled upon the English High Court Writ. All actions of whatever nature included in the classes enumerated above must now be raised in the form of writ provided by the Act, which, after giving the names of the pursuer and defender, states shortly the nature of the claim or demand or the ground of appeal or cause of action, as, e.g., for "payment of £ ..... for goods sold and delivered, conform to account hereto annexed"; "for delivery of a motor car, &c."; "for declarator that, &c."; "that defender be ordained to, &c.", or otherwise as the case may be, and then proceeds to narrate, with equal brevity, the nature of the remedy which the pursuer asks the Court to enforce or grant. Upon the writ being presented to the Clerk of Court, or Sheriff-clerk as he is known in Scotland, a warrant of citation, signed by him, is written thereon. The warrant is of two kinds —in summary causes, summary applications, and Workmen's Compensation cases it appoints the defender to "answer", that is, appear personally or by an agent, on a certain day at a fixed hour. In all other causes (except, of course, small debt causes, which are governed by a special set of rules) the warrant appoints the defender to be cited on an *induciae* (or warning) specified, and appoints him, if he intend to defend the action, to lodge a notice of appearance within the time of warning specified, which is ordinarily seven days if the defender is within Scotland, fourteen if in Orkney or Shetland or other island furth of Scotland. The writ is executed by service on the defender of a copy thereof, and of the warrant of service, together with a schedule of citation signed by the person serving it. Service may be effected by an Officer of Court, but is now almost universally accomplished, except in cases where personal service is essential, by means of a registered letter signed by a solicitor. If prayed for in

a writ containing conclusions for the payment of money, other than for expenses, the warrant of service may include a warrant to arrest, on the dependence of the action, the goods or moveable effects of the defender in the possession of a third person. The arrestment, if used, may be recalled by the defender on payment or by finding security for the sum sued for. If the defender does not "answer" in a summary cause or lodge a notice of appearance in an ordinary cause, the pursuer may take decree in terms of his claim at any time after the expiry of the *induciae*. At any time before implement of the decree, the defender may "repone" against the judgment on paying £2 of expenses and stating his proposed defence.

Procedure in Ordinary Defended Action

Where appearance is entered by the defender, the case is "tabled" on the first Court day after the expiry of the *induciae*. At the tabling of the case, or within three days thereafter, the pursuer must lodge a condescendence, or full statement of his claim contained in articulate paragraphs, along with a note of his pleas in law. Thereafter the defender must lodge his defences, in the form of an articulate series of answers to the articles of the condescendence, within six days after the lodging of the condescendence. The pursuer, after defences are lodged, and before the diet for the adjustment of the record, makes up and lodges the process. Along with their respective pleadings, or at latest before the closing of the record, if required by the opposite party or by the Sheriff, the parties must lodge any documents founded upon in the pleadings, so far as within their custody or power. If such documents be in the hands of third parties, they may obtain a diligence for their recovery. Upon defences being lodged, the Sheriff-clerk enrols the case for an ordinary Court day, occurring not less than four days thereafter, for adjustment of the pleadings. The Sheriff may, on cause shown, or *ex proprio motu*, order a revisal of the pleadings, or he may order the pursuer to answer the defender's separate statement of facts, if any have been lodged. When the pleadings have been "adjusted", the Sheriff closes the record by formal interlocutor, which then becomes the "case" on which judgment is ultimately pronounced. At the time of closing the record the Sheriff determines the next step of procedure, which varies according to the nature of the pleas of the parties, which do not differ in the Sheriff Court from those in the Court of Session. If either party has "preliminary" pleas which require disposal before the merits of the cause can be dealt with, the case will be sent to the roll for debate, otherwise a proof is ordered and set down for a specified day. After the proof is heard the Sheriff delivers a written judgment, disposing separately both of the facts and the law of the case. The rules relating to the recovery of documents required at the trial, the taking of the evidence, &c., do not differ from those observed in the Court of Session or in the English High Court of Justice. The procedure incidental to an ordinary action, such as amendment of the pleading, judicial remits and references, is based upon that of the Court of Session, and is practically identical.

Appeals

It is impossible in this sketch to do more than indicate the kind of appeal which is competent. Appeal to the Court of Session from the Sheriff Court is competent only if the value of the cause exceeds £50. In summary causes, in which the sum in dispute exceeds £20 but is less than £50, there is a certain limited right of appeal from the Sheriff (though not from the Sheriff-Substitute) on questions of law stated in the judgment. And under certain statutes, such as the Workmen's Compensation Act, and the Agricultural Holdings Act, there is a mode of review of the judgment of the Sheriff-Substitute (the jurisdiction of the Sheriff being wholly abrogated) by what is known as a stated case, in which the opinion of the Sheriff-Substitute on a stated question of law, though not of fact, may be submitted to the Court of Session for its opinion.

Generally speaking, in ordinary causes there is an appeal in all cases from the Sheriff-Substitute to the Sheriff, and in summary causes there is a right of appeal on fact and law if the evidence has been recorded, and on questions of law only if the evidence has not been recorded. There is no appeal to the Sheriff in summary applications.

COURTS OF JUSTICE IN IRELAND

The Courts exercising jurisdiction in Ireland fall into four groups. (1) The Supreme Court of Judicature; (2) the Irish Land Commission Court; (3) the County Courts; (4) the Courts of Petty Sessions. Of these the Land Commission is the only Court which has no parallel in England.

The Supreme Court of Judicature

This Court was constituted by the Supreme Court of Judicature Act (Ireland), 1877. By that Act the then existing High Court of Chancery, Court of Queen's Bench, Court of Common Pleas, Court of Exchequer, Court of Probate, Court for Matrimonial Causes and Matters, and Landed Estates Court were immediately consolidated with the Supreme Court of Judicature in Ireland, and subsequently the High Court of Admiralty was also included.

Under the Judicature Act the Supreme Court was divided into two permanent divisions: (*a*) The Court of Appeal in Ireland; (*b*) The High Court of Justice in Ireland.

The Court of Appeal

The Court of Appeal was constituted of five *ex officio* judges and two ordinary judges called Lords Justices of Appeal. The *ex officio* judges are now the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, and the Lord Chief Baron of the Exchequer (an office which is to be abolished on the next vacancy). The Sovereign may also appoint as additional judge of the Court of Appeal any person who has held any of the above offices and who signifies in writing his consent to act. The Court of Appeal exercises jurisdiction in appeals from the High Court and Land Commission and in certain cases from County Courts.

The Lord Chancellor is permanent president of the Court of Appeal, but he also exercises a personal jurisdiction of first instance in lunacy matters and in matters relating to infants and under the Solicitors Acts.

The High Court of Justice

The High Court exercises the jurisdiction of first instance formerly exercised by the Courts above-mentioned, and also by the Courts created by Commissions of Assize, of Oyer and Terminer, and Gaol Delivery. By the Judicature (Ireland) (No. 2) Act, 1897, the jurisdiction of the Court of Bankruptcy was also transferred to the High Court.

By the Judicature Act, 1877, the High Court was divided into five Divisions: (1) The Chancery Division; (2) the Queen's Bench Division; (3) the Common Pleas Division; (4) the Exchequer Division; (5) the Matrimonial Division; but by subsequent legislation the last four Divisions and the Courts of Bankruptcy and Admiralty are grouped together into one Division now called the King's Bench Division.

The Chancery Division

The judges of the Chancery Division are the Lord Chancellor, the Master of the Rolls, one ordinary Justice, and the Judge of the Landed Estates Court. Of these the Master of the Rolls and the ordinary Justice sit as judges of first instance, and exercise jurisdiction in the same matters as are assigned to the Chancery Division in England (see p. 106). The Land Judge exercises a jurisdiction under the Landed Estates Court Act, 1858, but sometimes also sits as an ordinary judge of the Chancery Division.

The King's Bench Division

The King's Bench Division now consists of the Lord Chief Justice of Ireland, the Lord Chief Baron, and six ordinary justices. Upon the next vacancy in the office of Lord Chief Baron another ordinary justice is to be appointed. To one judge all matrimonial and probate matters are assigned, to another all admiralty, to another bankruptcy. The jurisdiction and the procedure are analogous to those of the English King's Bench Division.

The Irish Land Commission

This Court was constituted under the Land Act, 1881, and its jurisdiction has been from time to time extended. It consists of a judicial commissioner, who is a judge of the Supreme Court, and five commissioners. The main jurisdiction is by way of appeal from the sub-commissioners in fair-rent cases. But three of the commissioners are Estates Commissioners under the Land Act, 1903, and are charged with the administration of Irish Land Purchase.

The County Courts

Since the passing of the County Officers and Courts (Ireland) Act, 1877, there have been in Ireland twenty-one County Court judges, who are

also Chairmen of Quarter Sessions. Of these County Court Judges, five are respectively also Recorders of Dublin, Cork, Belfast, Londonderry, and Galway. As Chairmen of Quarter Sessions the County Court Judges preside at Quarter Sessions, and either with or without other magistrates of the County, exercise with a jury criminal jurisdiction. This jurisdiction by statute only excludes treason, entering lands armed by night in pursuit of game, and certain offences connected with elections; but in practice prisoners are not returned for trial at Quarter Sessions in the case of graver offences, such as murder, manslaughter, rape, criminal libel, or in graver cases of lesser offences.

The County Court judge, also in his capacity of chairman, has jurisdiction in certain cases by way of appeal from magistrates in Petty Sessions.

On the civil side the County Court judge has jurisdiction up to £50 in contract and tort, and in ejectment in respect of premises the annual value of which does not exceed £30, or the rent of which does not exceed £100. But no action can be commenced in the County Court in respect of slander, libel, breach of promise of marriage, or criminal conversation.

A County Court judge in Ireland has also a jurisdiction on the equity side of his Court in the following matters: administration suits, the execution of trusts, suits to enforce a mortgage or charge or to redeem property mortgaged; for specific performance, cancelling or reforming deeds, partnership suits, partition suits, proceedings under the Trustee Relief Acts, probate suits, where in each case the personalty to be dealt with does not exceed in value £500, and the realty does not exceed £30 in annual value. In such cases the County Court judge has all the powers of a judge of the Chancery Division of the High Court. The County Court judge has also jurisdiction under the Married Women's Property Act, 1882, in all questions between husband and wife, no matter what the value of the property; in lunacy matters, where the property to be dealt with does not exceed £700; and under the Workmen's Compensation and Employers' Liability Acts.

On the common-law side there is in all cases an appeal from the County Court judge in the nature of a rehearing to the Judge of Assize; and on the equity side to the Lord Chancellor or the Judge of Assize.

County Court judges have also jurisdiction in certain proceedings peculiar to Ireland:—Fair-rent and true-value cases under the Land Acts, and cases dealing with compensation for criminal injuries and under the Town Tenants (Ireland) Act, 1906.

Courts of Petty Sessions

There are stationed throughout Ireland paid justices called Resident Magistrates, appointed by warrant by the Lord Lieutenant. These, together with the ordinary unpaid Justices of the Peace, exercise jurisdiction in Ireland at Petty Sessions. Their jurisdiction and procedure is closely analogous to the jurisdiction and procedure of justices in England.

CHAPTER XXVII

INTERNATIONAL LAW

Introductory—Private International Law—Public International Law

INTRODUCTORY

International Law is divided into (*a*) Private International Law; (*b*) Public International Law.

Private International Law is concerned with the rules or principles which govern the Courts of one State in determining when it is necessary to apply the law of another State instead of its own law. Every State is entitled to enforce its own law in its own Courts, but occasions frequently arise when it would be obviously unjust to do so. For example, if two Italians contracted in Italy, one would assume that they intended their contract to be governed by Italian law. Accordingly, if by some chance circumstances they came to litigate on the contract in an English Court of Law, the English Court would construe the contract by the light of Italian law, in so far as it differed from English law, in accordance with the intention of the parties. Hence it is recognized that occasions must arise when it is necessary, in the interest of justice, to apply an alien law, and to a large extent the Courts of all States agree as to the principles governing such application; in other words, the principles are largely common to the Courts of all States, and for that reason are collectively known as Private International Law. There is no absolute unanimity; this chapter is concerned with the International Law as applied by British Courts.

Public International Law is concerned with the rules which regulate the relations between sovereign States. The parties in Public International Law are States; in Private International Law the parties are private individuals. There is no Court of Law to settle the disputes of States; in Private International Law the ordinary Courts mete out justice between the litigants, but in Public International Law the last resort is war. There is no tribunal, no authority to create and promulgate Public International Law, no authority to say decisively what it is. Yet States, like individuals, have with the march of civilization found it necessary to recognize certain laws by which their relations with each other ought to be governed, and the majority of such laws are by this time so well established, that any wanton breach of them would not only entitle the aggrieved State to redress its wrongs by war, but would merit the condemnation of all other States. At first it might seem that Public International Law is out of place in a work of this description. Some knowledge of it, however, is important, particularly to those interested in foreign trade.

PRIVATE INTERNATIONAL LAW

Nationality and Residence

In commercial law little turns upon a person's *nationality*, that is the State to which he owes allegiance; a more important factor is a person's *domicile*. But nationality from the commercial standpoint is sometimes of importance, and the law as applied in this country must be considered. The laws of all States unfortunately do not agree as to what constitutes (*a*) nationality, (*b*) the acquisition of a new nationality, (*c*) abandonment of an old one. The result is that a person may

find that he owes allegiance to more than one State.

Again, the rights of aliens differ widely in different States. To ascertain his position, the alien would be well advised to consult the accredited agents of his own State resident in the State in which he finds himself. The rights and privileges which constitute the status of a British subject are mainly the political rights and the capacities for the acquisition and holding of property, and the personal rights and privileges which a British subject carries with him into foreign countries, e.g. (1) the privilege of protection; (2) the right and liability to become a party in proceedings in British Consular Courts established under the Foreign Jurisdiction Act, 1890; (3) the right to be married in foreign countries under the provisions of the Foreign Marriage Act, 1892. There are, on the other hand, special liabilities imposed by British law on British subjects for certain crimes committed in foreign countries.

Nationality by Birth

Any person who is born within His Majesty's Dominions is from the moment of his birth a British subject, whatever may be the nationality of either or of both of his parents, and however temporary and casual the circumstances determining the locality of his birth may have been. Exceptions to this general rule are: (1) the child of an alien enemy, or (2) of an ambassador or other diplomatic agent accredited to the Crown by a foreign Sovereign. A person whose father or paternal grandfather was born within His Majesty's Dominions is deemed a natural born British subject, although he himself was born abroad. A person born on a British ship on the high seas, whether a ship of war or a merchant ship, is a British subject.

Naturalization

Special Acts of Parliament have been passed from time to time conferring the rights of a British subject upon particular persons.

The grant of any of the rights of a British subject may be conferred by "letter of denization", which is an ancient prerogative of the Crown. The usual means, however, is by a certificate of naturalization under the Naturalization Act, 1870. An alien who has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends when naturalized either to reside in the United Kingdom or to serve under the Crown, may apply to one of His Majesty's Principal Secretaries of State for a certificate of naturalization. The applicant must adduce evidence of his residence or service or intention to reside or serve. The granting of the certificate is in the entire discretion of the Secretary of State, and no appeal lies from his decision. No certificate is granted until the oath of allegiance is taken.

The laws made by the legislature of any British possession for imparting to any person the privileges of naturalization to be enjoyed within the limits of such possession are good, but only within such limits.

An alien to whom a certificate of naturalization is granted is entitled to all political and other rights, powers, and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom. But when he is within the limits of a foreign State of which he was a subject previous to his obtaining a certificate of naturalization, he is not to be deemed a British subject unless he has ceased to be a subject of that State in accordance with its laws or a treaty. The reason, of course, is to prevent the danger of friction with a friendly State.

An alien, it must be remembered, can hold property in this country, whether real or personal, excepting any share in a British ship (see Part VI). But the political disqualifications of aliens still remain, and it is to remove these that the majority of applications for naturalization are made.

Aliens Act, 1905

The immigration of undesirable aliens is now restricted by the Aliens Act, 1905. An immigrant ship—that is, one bringing to the United Kingdom more than twenty immigrant aliens (steerage passengers)—must not land any immigrant except at a port where there is an immigration officer. If the immigrant is an undesirable the immigration officer must refuse leave to land. An alien is an undesirable immigrant if he is not in a position to obtain the means of decently supporting himself, or is a lunatic or idiot, or one likely to become a charge upon the rates, or guilty of a crime in respect of which he might be extradited. But leave to land must not be refused merely for want of means if the immigrant satisfactorily shows that he is seeking shelter on political or religious grounds. Nor must leave be withheld in the case of an immigrant who shows to the satisfaction of the officer that, having taken his ticket in the United Kingdom and embarked for some other country immediately after a period of not less than six months, he has been refused admission in that country and returned direct to a port in the United Kingdom. An alien is not an "immi-

grant" at all if he is only landing for the purpose of proceeding within a reasonable time to some destination out of the United Kingdom, or has a prepaid through ticket. A person whose father is a British subject and who was himself born in the United Kingdom cannot be refused a landing.

The Secretary of State has power to order the expulsion of any alien if it is certified by any Court that he has been convicted of any felony or any misdemeanour or other offence for which the Court has power to impose imprisonment without the option of a fine, or certain offences under the Burgh Police (Scotland) Act, 1892, or the Towns Improvement (Ireland) Act, 1854, or the Metropolitan Police Act, 1839; or if it has been certified by a Court of summary jurisdiction that the alien has received parochial relief within three months from the hearing, and within twelve months from his landing, or that he has committed in a foreign State an extraditable crime.

Once an expulsion order has been made, the alien becomes for the future an "undesirable" immigrant. If the order is made within six months from the landing, the master of the ship or any other ship belonging to the same owner is liable to pay the costs of expulsion.

Expatriation and Readmission

A person of full age, who by reason of birth within the dominions of His Majesty is a natural-born British subject, and is at the same time by reason of some foreign law a subject of that foreign State, may make a declaration of alienage, whereupon he ceases to be a British subject. The same applies to a person born out of His Majesty's dominions of a father being a British subject.

If a person voluntarily becomes naturalized in a foreign State, he *ipso facto* ceases to be a British subject. It would avoid the danger of friction if other States were to adopt a similar attitude. A person who has ceased to be a British subject may obtain a certificate of naturalization on the same conditions as an alien.

Natural Status of a Married Woman and Children

A married woman has the same nationality as her husband. A widow, being a natural-born British subject, but who lost that nationality on her marriage, may obtain a certificate of naturalization in the manner provided for.

As regards children, if the father, being a British subject, or the mother, being a British subject and a widow, becomes an alien, every child who during its infancy has become resident in the country in which such parent has been naturalized, and has, according to its laws, become naturalized, is a subject of such State and not a British subject. So, if the parent obtains readmission, or, being an alien, obtains a certificate of naturalization, every child who during its infancy is resident within the British Dominions becomes a British subject.

From the business point of view *domicile* is of more importance than nationality. Domicile is a question of residence, but not mere residence. A person is domiciled in a State when he resides there and intends that it shall be his permanent home. Usually a person's domicile is the country of his birth, and in the majority of cases his domicile corresponds with his nationality. But domicile can be changed without any corresponding change of nationality. An Englishman may emigrate to the United States and acquire a domicile there without ceasing to be a British subject; he, in fact, changes his domicile from British to American.

An Englishman does not lose his English domicile and acquire an American domicile by merely residing in the United States, even though he resides there for twenty years, or to the day of his death. Something more is necessary. He must leave his own country with the intention of making a home in a new country and remaining there, and with the intention never to return to reside permanently in his old country. Hence a man can change his domicile as often as he pleases, provided that on each occasion he intends so to change his domicile. Whether a person has changed his domicile depends upon the circumstances in each case. The fact that he has declared his intention to make his new home his permanent home is important, but is by no means conclusive. Such a declaration might not be *bona fide*; it might be made with the intention of avoiding death duties imposed in one's native land or of escaping some personal obligation imposed by the State. Change of domicile would be indicated by marriage in the new country or by buying land or a house, showing the intention of forming a permanent home, and such-like circumstances. Long residence is another strong indication, but this may be rebutted by the fact that the residence was necessitated on the grounds of health.

A person's domicile often determines the law to be applied by a Court for the settlement of a dispute before it. Inasmuch as the laws of the respective British Dominions differ more or less from each other, it is important to note that a British subject has a different domicile according to the part of the British Dominions in which he is domiciled. Moreover, it is often difficult to decide if there has been a change of domicile, for British subjects move from one part of the Dominions to

another for business purposes frequently without the intention of changing their domicile.

Domicile of Married Women and Infants

A married woman has the domicile of her husband whether she lives with him or not, and her domicile accordingly changes with his. She cannot acquire a new domicile for herself. But in the case of desertion, or judicial separation, or divorce, she can acquire a domicile for herself.

Infants have the domicile of their parents, but upon marriage under age they acquire their own domicile.

Marriage and Legitimacy

Each State has its own marriage laws, and a valid marriage in one country is not necessarily a valid marriage in another. Questions affecting international law arise in some such way as follows:—An English Court is called upon to decide to whom belong the goods of A, a deceased intestate. They belong to B, provided that B is the legitimate son of A. A was a domiciled Portuguese who married his cousin C in England. The marriage of cousins in England is valid, in Portugal it is invalid. The English Court, following the Portuguese law, would declare the goods not to belong to B on the ground that he is not the legitimate son of A. The principles which guide the Court in determining whether a marriage is valid are briefly as follows:—The marriage as regards mere forms must be in accordance with the requirements of the law of the State in which the marriage is celebrated. If Portuguese subjects choose to marry in England, they must be married in a registry office or in Church by publication of the banns, &c., and unless they do so the marriage is invalid in England and all the world over. Foreign persons, however, may always be married in the Embassy of their State in accordance with the laws of their own State.

But the fact that foreign persons marry in accordance with the laws of the State in which the marriage is celebrated does not necessarily constitute a valid marriage. If the law of their domicile forbids such a marriage altogether upon some material principle, the marriage is invalid everywhere. The marriage of domiciled Portuguese cousins will be held invalid in any country, no matter where the marriage was celebrated. It must be carefully noted that it is the law of the *domicile* that affects the question, and not the law of the nationality. Thus, if Portuguese cousins *bona fide* come to England in order to acquire an English domicile, they can contract a valid marriage.

Most unfortunately countries differ in what they consider to be matters of form and matters of principle, with the result that in some cases persons are married according to the law of one country and not of another. Particularly does this unfortunate position arise in French and English mixed marriages. In France no marriage is good unless certain consents of parents, &c., are obtained. English law regards this prohibition as a mere matter of form, and consequently if a domiciled Frenchman marries an English woman in England, even without the consents necessary by French law, the marriage is valid by English law; and so it would be by French law if it were not that French law insists upon regarding the prohibition in question as more than a matter of form. The result is that the marriage is invalid in France but binding in England. (See *Ogden v. Ogden* (1907).)

By the law of most States, although not by English law, the subsequent marriage of persons legitimizes their natural children. It is the law of the domicile of the parents that determines the question. For example, A was the natural son of B and C, who subsequently married. B, the father, was a domiciled Scotchman at the birth of A and at the time of the marriage. By Scots law A becomes legitimate upon the subsequent marriage of his parents, and such legitimation is recognized everywhere. But if B had become domiciled in England before the birth of A, then A could not have been legitimized by the subsequent marriage.

Where succession to English land is concerned, the English Courts do not act upon the same principle. To succeed as heir to English land a person must be legitimate not only in accordance with the law of his domicile, but in accordance with English law. Thus, to take the example above, if B, a domiciled Scotchman, died intestate possessed of land and personal property in England, his son A (legitimized *per subsequens matrimonium*) could succeed to the personal property as being the legitimate son of his father according to the law of his domicile, but could not succeed to the land as heir of his father because he was not legitimate in accordance with English law.

Divorce

As regards the dissolution of marriage, there is not unanimity of opinion. The practice of English Courts seems in accordance with justice, and is in marked contradiction to that of some of the States of the United States of America. The practice is (i) to refuse to assume jurisdiction to dissolve any marriage unless the parties are domiciled or were domiciled in England, and the hus-

band by deserting his wife has changed his domicile; (ii) to recognize a decree of dissolution of marriage by a foreign Court, provided that the Courts of the domicile of the parties would recognize the validity of the decree; (iii) not to recognize the validity of a decree of dissolution of the marriage by foreign Courts of domiciled English persons married in England.

Parties to Actions and Procedure

To what extent can foreigners sue or be sued? They may be persons, e.g. subjects of a foreign state, Sovereigns, Ambassadors, Consuls, or Corporations, or persons incorporated for the purpose of trade in accordance with the laws of the particular state where they are incorporated.

With certain exceptions, persons can sue or be sued in the Courts of States in which they are not domiciled. The Courts are open to everybody. In England, if a person not domiciled in this country commences litigation, he may be compelled to give security for costs—a reasonable restriction on one who would probably have no property in this country to answer costs in case his litigation was unsuccessful. If such a person is sued and is not resident, as distinguished from domiciled, in this country, the leave of the Court to serve the writ of summons upon him out of the jurisdiction must be obtained. (See Chapter XXVI of this Part.) Apart from these rules of procedure, any person may sue or be sued in an English Court.

Foreign Corporations

Similarly, all foreign corporations can sue or be sued in an English Court, provided that they are incorporated by foreign law on the same lines as an English statutory corporation, be it for purpose of trade or not.

These remarks do not apply to a foreign firm, no matter how many partners it may consist of, which must sue or be sued by its individual members. An English firm may sue or be sued in the *firm's* name, as a convenient form of procedure; the actual litigants, in fact, are the members constituting the firm.

A foreign corporation, if it sues in this country, must give security for costs the same as a foreign person. But if it is to be sued, difficult questions may arise as to the right to serve the writ of summons in this country. In the case of an individual, the writ of summons must be served upon him personally. In the case of a corporation, it must be served upon the manager or other head officer, town clerk, treasurer, or secretary of such corporation according to circumstances. If the corporation does not trade or have any permanent residence here, no doubt arises, as the leave of the Court must be obtained to serve the writ abroad, as in the case of an individual. But if the foreign corporation also "resides" in this country, it may be possible to effect service in this country without obtaining the leave of the Court, and the difficulty is to determine whether there is a "residence" in this country. As far as foreign trading companies are concerned, the law has been simplified by the Act of 1908. (See Chapter IV of this Part.)

As far as England is concerned, Scotch and Irish corporations are foreign corporations. If service of process has been provided for by statute in the case of such corporations, then service can only be effected in that mode, as in the case of companies incorporated under the Companies Acts service must be at the registered office. Consequently, although a Scotch trading company so registered carries on its business materially in England and has many branch offices, it cannot be served in this country. (As to service out of the jurisdiction, see Chapter XXVI of this Part.) The same applies in the case of Scotch railway companies incorporated under special Acts of Parliament into which the provisions of the Railways Clauses Act, 1845, have been incorporated. But where there is no such statutory provision, process can be served upon a Scotch corporation and all foreign corporations in this country, provided they are resident in this country; residence for this purpose is a question of fact; the corporation must carry on its business or a material part of it in this country, and there must be a head officer or manager upon whom service can be made. If a foreigner is found within the jurisdiction, he may be served with a writ, although the cause of action did not arise in England; and it is not easy to see why there should be a difference as to the right to serve a foreign corporation which is found to have a place of business and to be trading in this country, and which is therefore to be treated as resident here. But a foreign corporation cannot be resident here unless the business is conducted at some particular place for some substantial period of time. It is possible to agree to the particular mode of service, and to appoint a particular person to accept service.

Residence for Income Tax Purposes

A foreign corporation may reside in this country for the purposes of income tax. The test of residence in such a case is not the place where it is registered, but where it really keeps house and does its business. The real business is carried on

where the central management and control actually abides. Whether any particular case falls within that rule is a pure question of fact to be determined, not according to the construction of this or that regulation or by-law, but upon a scrutiny of the course of business and trading.

A Sovereign Prince or a foreign State may sue in an English Court both in respect of private rights and of public rights or property vested in him or it. A Sovereign who thus sues submits to the jurisdiction to the extent that he must give discovery of documents and answer interrogatories, &c., administered in the course of the litigation.

A Sovereign (or a foreign State) cannot be sued in an English Court unless sovereignty is waived. It is due from one nation to another that one Sovereign should not assume or usurp jurisdiction over another. If the Sovereign happens to be also a subject of England, he may be sued in his capacity of subject. The fact of sovereignty or of the existence of a foreign State is sometimes a doubtful question. It is difficult to say, for instance, when a community ceases to be a revolutionary body and is to be regarded in our Courts as a new government. Evidence of the fact of sovereignty or of the existence of a foreign State cannot be given, and it is the duty of the Courts to have recourse, in the case of doubt, to the Crown for information, and thus to avoid political complications.

A Sovereign (or a foreign State) is not liable in the general case in respect of a counterclaim set up in the action in which he sues. For a counterclaim is in the nature of a cross action, and a sovereign, by instituting proceedings, does not waive his privilege to that extent.

Although a foreign Sovereign cannot be sued, it is sometimes possible to obtain justice by suing his agent if he has been entrusted with money for the purpose of carrying through a contract. In *Larivière v. Morgan* (1872) the Court held that where a foreign government has made a contract in this country, and has lodged money in the hands of agents in this country for payment of the sums to become due under the contract, the Court will not refuse relief to the contractor because the contract was with a foreign government, nor because the foreign government does not appear before the Court. In order to give a right of action, the agent must be in some way personally liable to the contractor, or hold the moneys in trust for the contractor.

As regards the property of a foreign Sovereign, the law has been laid down in the well-known case of the *Parlement Belge* (1880), where it was held that an unarmed packet belonging to the Sovereign of a foreign State, and in the hands of officers commissioned by him, and employed in carrying mails, is not liable to be seized in a suit *in rem* to recover redress for a collision, and that this immunity is not lost by reason of the packet's also carrying merchandise and passengers for hire. As a consequence, it was said, of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign State to respect the independence of every other foreign State, each State declines to exercise, by means of any of its Courts, any of its territorial jurisdiction over the person of any Sovereign or ambassador, or over the public property of any State which is destined to its public use, or over the property of any ambassador, though such Sovereign, ambassador, or property be within its jurisdiction. In a later case, *The Jassy* (1906), all proceedings that had been commenced were stayed upon the application of a foreign Sovereign State and the production of a certificate from the Foreign Office as to the public character of the vessel in question, and no waiver of the privilege was assumed, although during the presence of the vessel in this country, and under a misapprehension, in order to procure her release, agents of the Government to which the vessel belonged had given an undertaking to put in bail, and had entered an absolute appearance in the action.

Ambassadors

By a legal fiction an ambassador, his family, members of his suite, servants, &c., are deemed to be resident in the country which he represents, and not in the country to which he is accredited.

The Courts of all countries recognize the immunity of ambassadors from the civil and criminal Courts of the country to which they are accredited. In Britain the immunity was and is recognized by the common law, but is for the most part provided for by statute (7 Anne, c. 12), an Act passed owing to an incident in connection with the then Russian Ambassador who was detained in custody for some hours. All writs and processes whereby the person of any ambassador, &c., or his domestic servant may be arrested, or his goods or chattels distrained, are to be deemed utterly void. The names of such servants must be first registered in the office of one of the principal Secretaries of State, and by such secretary transmitted to the office of the Sheriffs of London and Middlesex.

An ambassador cannot be compelled to give evidence, although he may waive this privilege.

The privilege of an ambassador's servant is lost if he engages in trade, but this does not apply to the ambassador himself. The privilege does not extend to a person who is not a *bona fide* servant,

even though he has been duly registered as such at the Foreign Office. Where an honorary attaché of the Persian embassy had obtained his appointment for the purpose of protecting himself against his creditors, he was not entitled to the privilege.

Consuls have not the privilege. They have certain rights, but they are of a public character. (See "Public International Law" and Part II, Chapter III.)

Procedure

Procedure is settled by the Court that tries the action. If an action is tried before an English Court, its procedure must be observed. The action must be brought in the right name and against the right person as determined by English law. For instance, the foreign assignees under a foreign bankruptcy may sue in this country to recover their debtor's property, but not in their own name, even though they could do so by the laws of their own country; they would have to use their debtor's name, unless they obtained a legal assignment from their debtor. So the remedy and the method of enforcing the judgment would be for the Court of trial.

As regards the limitation of time within which an action can be brought, if the law simply bars the remedy, it is a matter of procedure, and a foreign Court would ignore it, but if it extinguishes the right, then a foreign Court would recognize the fact. Thus the Statute of Limitations, 1619, as to certain debts, &c., bars the remedy; the Real Property Limitation Act, 1874, extinguishes the right. Hence, if an action in respect of an English debt be brought in a foreign Court, it would be no defence to plead the Statute of 1619; whereas, if it were in respect of a debt within the provisions of the Real Property Limitation Act, 1874, it would be a good defence to plead the Statute.

The service of the writ of summons is, of course, a question for the Court of trial. (See Chapter XXVI of this Part.)

Evidence is a question for the Court of trial. Foreign law is proved by experts in that law. The Court will look at the written statutes of other countries. Documents in foreign languages must be translated, and the translations proved by experts.

By means of the machinery provided by the British Law Ascertainment Act, 1859, it is possible in any action dependent on any Court within His Majesty's Dominions to obtain the opinion of a Court in any other part of the British Dominions as to the law applicable to that part; and by the Foreign Law Ascertainment Act, 1861, provision is made for ascertaining the law of a foreign country, though the latter Act is practically inoperative.

The Statute of 14 and 15 Vict. c. 99 provides for the proof in England by means of examined or authenticated copies of proclamations, treaties, judgments, decrees, orders, and other judicial proceedings of any Court of Justice in any foreign state or British Colony, and all affidavits, pleadings, and other legal documents filed or deposited in any such court.

If the foreign law ascribes any weight to a document as a means of proof, the English Court will ascribe the same weight to it. For example, an officially signed marriage certificate in France is evidence of the marriage by French Law, and an English Court will accept the certificate, provided that the French Law is first proved by expert evidence.

By the Statute 19 and 20 Vict. c. 113 it is possible to obtain an order from the Court for the examination of witnesses in this country in relation to any civil or commercial matter pending before a foreign tribunal. The certificate of the Ambassador or other diplomatic agent of a foreign Power that any matter is in fact a civil or commercial matter pending in the Court of his country is sufficient evidence in support of the application, but failing the certificate other evidence is admissible.

Foreign Judgments

It is not an admitted principle of Private International Law that a State is bound to enforce within its territories the judgment of a foreign tribunal. Several foreign nations (including France) do not enforce the judgments of other countries except where there are reciprocal treaties to that effect. But in England and in those States which are governed by the common law, such judgments are enforced not by virtue of any treaty or statute, but upon the principle that where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained. In other words, the judgment creates a new obligation which can be sued upon, or the action can be brought upon the original cause of action. Other things being equal, it is better to sue on the judgment, for once the foreign judgment is duly proved, the plaintiff is generally entitled to succeed. The foreign judgment cannot be impeached in an action upon it in an English Court on the grounds that it was erroneous on the merits, nor can the defence set up that the tribunal mistook either the facts or the law. But it is open to the defendant to show that the Court

which pronounced the judgment had not jurisdiction to pronounce it, either because it exceeded the jurisdiction given to it by the foreign law, or because the defendant was not subject to the jurisdiction.

A judgment in respect of penalties will not be enforced. The rule that the Courts of no country execute the law of another applies not only to prosecutions and sentences for crimes and misdemeanours, but to all suits in favour of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other law, and to all judgments for such penalties.

Whilst it is vexatious to bring two actions in the same country with respect to the same subject-matter, and the Court will put the plaintiff to his election and stay one of the actions, the rule does not apply where one of the two actions is brought in a foreign country. If one of the actions is in a foreign country where there are different forms of procedure and different remedies, there is no presumption that the multiplicity of actions is vexatious, and a special case must be made out to induce the Court to interfere. The Court, however, has power to interfere in such a case under its general jurisdiction to restrain vexatious and oppressive litigation, and will interfere in a proper case even before decree.

Property

Property is divided, for the purpose of international law, into immovable and movable property. These terms are not technical terms in English Law, though they are often used and conveniently used in considering questions arising between English Law and foreign law. The division corresponds mainly but not entirely with the division in English Law of *real* and *personal* property (see Chapter XX of this Part); not entirely, because leasehold interests are immovables, whereas in accordance with English Law they are personal property. Immovable property comprises all rights over things which cannot be moved, including a mortgage on land.

Jurisdiction

An English Court will not adjudicate on questions relating to the title or right to the possession of immovable property out of the jurisdiction. The proper Court to exercise jurisdiction is the Court where the property is situated. There are exceptions to this rule, which depend upon the existence between the parties to the suit of some personal obligation arising out of contract or implied contract, fiduciary relationship or fraud or other conduct which in the view of an English Court of Equity would be unconscionable, and do not depend for their existence on the law of the *locus* of the immovable property. Thus, in cases of trusts, specific performance of contracts, foreclosure or redemption of mortgages, or in cases of land obtained by the defendant by fraud, or other such unconscionable conduct, the Court will assume jurisdiction.

The reason why in the general case the Courts refused to exercise its jurisdiction in question relating to the title or right of possession of immovable property out of the jurisdiction is that it would be unable to enforce its decrees. But where there is a trust or privity of contract, &c., the Court can act against a person within the jurisdiction, and can order him to carry out the trust or make the conveyance or give the mortgage, as the case may be, in accordance with the law of the foreign country where the immovable property is situated. If the law of the foreign country does not allow that to be done which the plaintiffs want to be done, then the Court will not exercise the jurisdiction.[1] To get actual possession, as distinguished from title, it is always necessary to go to the Court of the country where the property is. Assuming that the parties are bound by a contract such as would give the Court jurisdiction, the question would always remain whether the contract itself was to be construed by the light of English Law or the law of the country where the property, the subject-matter of the contract, is situated. Thus in *British South Africa Company v. De Beers Consolidated Mines, Ltd.* (1910), the defendant company advanced the plaintiff company the sum of £112,000, secured upon a mortgage, in the form of debentures, on land in Rhodesia, and by way of further consideration the defendant company was granted by the plaintiff company the exclusive licence to work all the diamondiferous ground to which the plaintiff company was or might become entitled. The plaintiff company paid off the sum advanced and claimed to have the property re-conveyed to them free from the obligation imposed by the licence on the ground that it constituted a clog upon the equity of redemption, which, in accordance with the English Law, it did. Such doctrine does not apply in Rhodesia, where Roman Dutch Law prevails, but upon the facts of the case the Court held that the contract giving the mortgage was an English contract to give a mortgage on foreign land, although the mortgage had to be perfected in accordance with the law of Rhodesia, and was therefore to be treated as an English mortgage subject to such rights of re-

demption and other equities as the Law of England regards as necessarily incident to a mortgage.

In *British South Africa Company v. Compania de Moçambique* (1893) the House of Lords held that the English Court has no jurisdiction to entertain an action to recover damages for a trespass to land situated abroad.

It is the law of the country where the property is situated which decides whether the property is movable or immovable property. It must be remembered that leasehold property is immovable property for the purpose of International Law; so the validity of a testamentary disposition of an English leasehold is governed by the law of England, and not by the law of the testator's domicile.

So, too, the incidents attaching to immovable property are determined by the law of the country where the property is, e.g. liability for waste, liability for debts, and the law of prescription.

The transfer of immovable property *inter vivos*, as regards formalities, must always be in accordance with the law of the country where the property is. The same law decides as to the restraint on alienation; for example, any person who is twenty-one years of age can validly convey land in England, although by the law of his own domicile he may be restrained from conveying land under the age of twenty-five years.

Similarly, to pass immovable property by will, the instrument must be in the form required by the country where the property is. A domiciled Scotchman possessing land in England must make his will as regards that land in accordance with the law of England, and *vice versa*. An English Court, however, will in a proper case compel the heir to elect when the testator has shown a clear intention to devise the land away from the heir. Thus, if an English testator devises his Scotch lands away from his heir by a will not effectual by Scots Law, and at the same time bequeaths to the heir other benefits under his will, the heir will be compelled to elect whether he will take the Scotch lands and so defeat the testator's wishes, or take the benefits bequeathed to him by the testator.

The construction of the will, as distinguished from its form, will be determined by the law of the domicile of the testator.

It is the law of the country where the immovable property is that determines who is the heir of a person dying intestate. English Law stands alone in requiring that the heir of English land must be legitimate by English Law as well as by the law of his domicile.

Bankruptcy operates to transfer land from the bankrupt to his trustee in bankruptcy. It would not vest foreign land in the trustee; but there is nothing to prevent a Court compelling the bankrupt to convey foreign land in accordance with the formalities required by that foreign country. Thus, by the English Bankruptcy Act of 1883, all land wherever situated passes to the trustee, with the result that the trustee can compel the bankrupt to execute a valid conveyance of foreign land. In Scotland, on the other hand, only the real estate in Scotland, Ireland, England, and the British Dominions vests in the Scotch trustee, and the bankrupt cannot be compelled to convey foreign land. (See Chapter XI of this Part.)

It is the law of the country where the property is situated which decides to what extent, if at all, property passes on marriage.

Movable Property

In general terms, movable property is governed by the law of the domicile of the owner and not by the law of the country where the movable property happens by chance to be. English land is always in England; a motor car may one day be in England and the next in France, &c., and neither the law of England nor of France is the determining factor.

If the movable property is situated in England, the English Courts may or may not assume jurisdiction. If the owner is not within the jurisdiction, the Court, as a rule, will not give leave to serve a writ upon him, whereas in the case of land leave will be granted as a matter of course. And even in the case of movable property leave will be granted in some cases; for example, in an action for administration of the estate of a person who at the time of his death was domiciled within the jurisdiction, or where a person to be served is a trustee out of the jurisdiction in respect of an English trust of property within the jurisdiction. Again, in some cases notice may be given to a person out of the jurisdiction that unless he comes in to present his claim to movable property, the Court will adjudicate in his absence. In the case of *Goldsmidt v. Oberrheinische Metallwerke* (1906) the Court appointed a receiver of debts due in this country to the defendant company; the plaintiff in an action had obtained judgment against the defendant company, incorporated and carrying on business in Germany, with no property within the jurisdiction which could be taken in execution by any ordinary process of execution.

Income Tax is chargeable upon movable property within the jurisdiction, even though its owner be resident without the jurisdiction.

In the case of alienation of movable property

inter vivos, so far as the actual act of transfer is concerned, the law regarded is that of the country where the movable is, thus constituting an exception to the above-mentioned general rule that it is the law of the domicile which is regarded. The act of transfer must be distinguished from the contract to transfer. A and B, two domiciled Englishmen, may contract to transfer from A to B a chattel at the time in France, which by French Law requires to be transferred in a particular way. The contract would be construed by English Law, but whether or not the chattel had been duly transferred would have to be decided in accordance with French Law.

Choses in action, for example debts, not being physical property, are said to have no locality. The validity of the assignment is said to depend upon the law of the country in which the chose in action originally arose. There appear to have been no certain principles laid down in English Law.

A will disposing of personal property is construed by the law of the testator's domicile *at the time of his death*; the same law decides the testator's capacity to make a will, and its form. Hence if A is domiciled in Germany at the time when the will is made, and dies domiciled in England, the will, if not executed in accordance with the formalities of English Law, is, apart from statute, invalid. As to a will made by a British subject out of the United Kingdom see Chapter XIII of this Part. Every will made within the United Kingdom by any British subject, whatever may be the domicile of such person at the time of making the same or at the time of his death, is, as regards personal estate, held to be well executed, and is to be admitted in England and Ireland to probate, and in Scotland to confirmation, if it is executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where it is made. But persons benefiting under the will are not bound to go to the Court of the testator's domicile. In *Ewing v. Orr-Ewing* (1883) there was large personal estate in Scotland, where the testator was domiciled, and small estate in England, yet the Court had power to administer the trusts of the will as to the whole of the estate, Scotch and English, at the suit of an English infant beneficiary. For the same reason the Court will grant probate if there is any personal property within the jurisdiction, but otherwise if there is no property at all within the jurisdiction.

If no executor has been appointed by a foreign testator who would be entitled to probate of movable property in England, the English Court may, in a proper case, grant administration to the person to whom a foreign Court has granted probate.

If the testator purports to exercise by his will a power of appointment, in the general case it is sufficient if the power is executed in accordance with the law of the domicile of the testator. But if the instrument which confers the power upon him requires certain formalities to be observed in executing the power, they must be observed.

In the case of intestacy, the distribution of the movable property is in accordance with the law of the domicile of the deceased intestate. Thus if A. B., a domiciled Englishman, dies intestate, leaving movable property in Scotland, the property must be distributed in accordance with the law of England. The legitimacy, however, of the parties to benefit must be determined by the law of the domicile of such parties.

Although an English Court will grant probate or letters of administration of the testator's property wherever situated, provided that there is some property in England, such grant would not entitle the personal representatives to collect property outside of England. Similarly, the personal representative appointed by a foreign Court must obtain probate or letters of administration in this country; if he acts without such grant, he is in the same position as an executor *de son tort*. (See Chapter XIII of this Part.) No doubt if he secures the property and removes it within the jurisdiction which granted the probate, he could be compelled to administer in accordance with the grant.

A simple method is provided for obtaining in England grant of probate or letters of administration already obtained in Scotland and Ireland, and *vice versa*.

Succession and Legacy

The relationship of the beneficiary to the testator for the purpose of legacy duty must be determined by the law of the beneficiary's domicile.

Marriage

Marriage by the laws of some countries effects a transfer of property belonging to the wife or husband or both, as it did in England prior to the Married Women's Property Acts. In case of conflict, the law to be regarded is the law of the domicile of the husband at the time of the celebration of the marriage, and the rights thus created are not lost by any subsequent change of domicile. If the rights of the parties are regulated by a marriage settlement, the settlement must conform to and be construed by the law of the domicile of the husband, unless there is something in the instrument itself which indicates a contrary intention.

Bankruptcy

The jurisdiction in bankruptcy in England is statutory. The Bankruptcy Act, 1883, s. 6 (1), gives the Court jurisdiction if the debtor is domiciled in England, or within a year of the date of the petition has ordinarily resided or had a dwelling-house or place of business in England. It is clear that the Court of Bankruptcy has no jurisdiction to make a receiving order against a foreign resident abroad who, without coming into the jurisdiction, has in this country had a place of business, contracted debts, and acquired assets, and has executed abroad an assignment of his property for the benefit of his creditors generally—*Cooke v. Vogeler* (1900).

To give jurisdiction, a man must be something more than a casual visitor staying at an hotel.

Under the English statute all the movable property passes to the trustee in bankruptcy, wherever it may be situated. Consequently, if a creditor obtains possession of the property situated in a foreign country by means of foreign execution, he will be compelled to refund. The assets must be distributed in England upon the footing of equality. There may be, no doubt, difficulty when creditors are abroad, as the foreign Court may not be disposed to assist the English Court. Concurrent bankruptcies are not uncommon. A creditor who had proved in a foreign bankruptcy would have to give credit in the English bankruptcy for the sum he had recovered, if any. The English Courts will recognize the title of a foreign trustee to recover the property of the bankrupt which chances to be in this country. Difficulties may arise as to the right to bring actions in the trustee's own name, because the foreign bankruptcy cannot operate as a legal assignment in this country. The bankrupt could be compelled to make a legal assignment to his trustee. (See Chapter XI of this Part.)

Contracts

The English Court has jurisdiction to try all actions on contracts, provided that the writ can be served upon the defendant within the jurisdiction, or, with the leave of the Court, without the jurisdiction. A person can be served with a writ whilst in England, no matter how transitory may be his stay there. In many cases it would be a waste of time to do so, for the defendant would not take the trouble to put in an appearance, and having no property in this country the judgment would be valueless. The Courts of one country recognize the judgments of the Courts of another country, but not if the person was not domiciled in such country and did not submit to the jurisdiction.

No process can be served on a person out of the jurisdiction without the leave of the Court. (See Chapter XXVI of this Part.) The cases of contract in which the Court may allow such service are: (i) If any contract affecting land within the jurisdiction is sought to be construed, rectified, set aside, or enforced. (ii) If the person is domiciled or ordinarily resident within the jurisdiction, but happens at the crucial time to be out of the jurisdiction. (iii) In actions for breach of contract within the jurisdiction, wherever the contract may have been made, which in accordance with its terms ought to be performed within the jurisdiction, *unless the defendant is domiciled or ordinarily resident in Scotland or Ireland.* (iv) If the person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

The English practice of assuming jurisdiction over foreigners temporarily present in England, although the contract is not to be performed there, is not in accordance with the general view of other countries as to the principle that should be applied. It will not be forgotten that actions for specific performance of contracts for purchase of immovable property situated out of the jurisdiction will not be entertained.

The capacity of a person to enter into a contract relating to immovable property is governed by the law of the country where the property is situated.

The form that contracts must assume is regulated by the law of the country where the contract is actually made. Thus, if English Law requires that certain contracts must be by deed, such contracts, if made in England, must be by deed in order to be recognized as valid, not only in this country, but in the Courts of any country. A distinction must be drawn between procedure and substantive law. Every country insists that its legal procedure should be followed in its own Courts. Thus English contracts concerning interests in land cannot be evidenced unless in writing signed by the person to be charged. Hence, although a contract concerning an interest in land be made in France, where writing is not required, still it cannot be proved in an English Court unless, in fact, it is in writing. The English Court adopts French Law in every respect in the case of such a contract, but not where procedure is concerned.

No country regards the revenue laws of another country on questions of stamps. An English Court will admit in evidence a French contract in writing not duly stamped in accordance with the requirements of the French Law.

Legality of Contract

If a contract is illegal by the law of the country where it is to be performed, it will not be enforced in any Court, no matter where the contract was made. A contract to lend money to a minor in England is void. It is none the less void because a French moneylender in France contracts to lend an English minor money, the money to be handed over in England. But if the contract is valid in the place where it is to be performed, it will be upheld in other countries, even though it would not have been valid by the law of those countries.

Immoral contracts stand on a different footing. In *Kaufman v. Gerson* (1904) it was laid down that an English Court will not enforce a foreign contract, though valid by the law of the country in which it was made, in cases in which the Court deems the contract to be in contravention of some essential principle of justice or morality.

Construction of Contracts

The parties having reduced the terms of their contract to writing, the assistance of the Courts has to be constantly requisitioned to determine what the parties meant. The Courts of different countries adopt varying rules of construction. In construing a foreign contract the Courts have to determine what rules of construction ought to be applied; that involves the necessity of deciding what law is to govern the contract. For this purpose the intention of the parties must be sought, and that is a question of fact. If the parties are domiciled in the same country and the contract is made in that country, little difficulty can arise; the intention of the parties in the absence of agreement would be that the law of their domicile should apply. In other cases, however, the terms of the contract and surrounding circumstances must be looked at to ascertain the intention, and each contract must turn upon its own particular circumstances.

The construction of a contract involves not only the meaning of the contract but the effect of it. This is again a question of the intention of the parties, or, in other words, a question of fact. In the important case of *Lloyd v. Grubert* (1865) it was said that it is generally agreed that the law of the place where the contract is made is, as a general rule, that which the parties intended, or ought to be presumed to have adopted as the footing upon which they dealt, and that such law ought to prevail in the absence of circumstances indicating a different intention, as, for instance, that the contract is to be entirely performed elsewhere, or that the subject-matter is immovable property situated in another country, and so forth. But in contracts of affreightment and bottomry bonds this rule does not prevail. Thus, in the case referred to it was laid down that where the contract of affreightment does not provide otherwise, as between the parties to the contract in respect of sea damage and its incidents, the law of the country to which the ship belongs must be taken to be the law to which they have submitted themselves. The practical explanation of this rule is that the master of the ship cannot be expected to be acquainted with the law of the country of each port he touches. Therefore a bond made by the master of a *foreign ship* hypothecating cargo laden on board such ship, if valid according to the law of the flag of the ship, will be enforced by the English Admiralty Court on the arrest of the ship and cargo at the port of London, although the conditions imposed by English Law as essential to the validity of such bond have not been complied with. (See further as to "Contract of Affreightment", &c., Part VI.)

As regards contracts of agency, if a principal employs an agent in a foreign country, the contract made by that agent will be, generally speaking, governed by the law of that country, and the principal will be bound to the same extent as the agent. English Law, however, may make the agent, whose principal is a foreigner, personally liable. (See Chapter II of this Part.)

A contract must be performed in accordance with the law of the country where it is to be performed, provided that there is no agreement to the contrary; for instance, an acceptor of a bill of exchange undertakes to pay in the mode and manner required by the law of the country where he accepted.

A discharge from liability on a contract by a foreign country—for example, under its bankruptcy or company winding-up law—is not a release in the country where the contract is to be performed. In *The New Zealand Loan and Mercantile Agency Co., Ltd. v. Morrison* (1897) it was held that a scheme of arrangement under the Joint Stock Companies Arrangement Act, 1870 (which does not apply to the Colonies), sanctioned by an English Court is in so far as regards Victoria a proceeding in a foreign Court, and cannot be pleaded by the company in a Victorian Court as a defence to an action by a non-assenting Victorian creditor for the full amount of her claim.

As regards the United Kingdom and the Dominions, it must be remembered that the Imperial Parliament can bind the whole of the Empire, and if by an Imperial Act a discharge is given which purports to bind the Colonies, then the Colonies

will be bound, although the contract, in respect of which the discharge was given, was to be wholly performed in the Colonies.

Wrongs

The English Court will exercise jurisdiction in actions of tort wherever committed, save as regards immovable property. The practical limitation of the exercise of jurisdiction is that the wrongdoer is usually out of the jurisdiction, and the Court will only allow service of the writ upon him in special cases. If the tort is committed out of the jurisdiction, service out of the jurisdiction will only be permitted if the wrongdoer is domiciled or ordinarily resident within the jurisdiction, although temporarily without it. Where the wrong is committed within the jurisdiction, service out of the jurisdiction will be allowed if in respect of land within the jurisdiction, or if an injunction is sought for any wrong about to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed.

In the case of *Halley* (1868) it was held that an English Court will not enforce a foreign law and give a remedy in the shape of damages in respect of an act which, by the English law, imposes no liability on the person from whom the damage was claimed. (For torts committed on the High Seas, see Part VI.)

PUBLIC INTERNATIONAL LAW

This branch of international law is concerned directly with Sovereign States, and only indirectly with private individuals. It consists of recognized usages which regulate the conduct of nations, enforced by the public opinion of civilized nations or in the last resort by war. The laws are derived from various sources—from the Roman Civil Law, from decisions of prize Courts, from textbook writers, and from treaties between nations. Treaties, of course, cannot make new law, as they only bind the parties to them, but they tend to mould public opinion, with the result that what was once a matter of treaty has in the process of time come to be regarded as a just and equitable rule of conduct which no nation can afford to ignore.

Sovereignty

A sovereign State is an independent self-governing political body. For this purpose a colony is not a sovereign State, for it forms part of a large State, and although it may be self-governing it is not independent of the mother State. All sovereign States are equal in the eyes of international law, be they powerful or weak. The sovereignty of a State is independent of its form of government. It is equally sovereign whether it be a monarchy or republic.

Sovereign States may come and go. Thus, when a permanent independent political body has come into existence as the result of civil war, it is entitled to be regarded as a separate State, and its sovereignty must be respected. This must be distinguished from the case of a mere international change, as, for example, the change to a republic from a monarchy. A State ceases to exist when it becomes in fact dependent on a supreme State, whether by conquest or by agreement.

A State, by virtue of its sovereignty, possesses certain well-recognized rights which it is the duty of other States to observe, but, except where they affect the business community from a practical point of view, they need not be considered at any length.

A State has the right to govern itself in its own way, to make its own laws, even though they affect foreigners within the jurisdiction; although any harsh treatment of the subject of a particular foreign State would call for diplomatic intervention and possibly war.

Every State has the right to protect itself. No State is entitled to complain of the increase of the defensive forces of another unless it is obvious that such an increase has a hostile purpose against itself.

State Property in Land and Water

A State has the right to own property. Its rights over land within its boundaries and adjacent islands need no comment. As regards the sea, it is recognized universally that the open sea is the property of all. This does not extend to bays and estuaries within the territory of a State, nor to seas wholly confined within the limits of a State. Rivers wholly confined within the territory of a State constitute part of that State's territory. In many cases rivers run through the territory of more than one country. A State has the right to legislate in respect of so much of the river as passes through its own territory, but, subject to such right, it must permit vessels peaceably to pass to the upper reaches of the river. This right, however, has not been uniformly recognized in the past, and the navigation of most of the larger rivers which pass through the territory of more

than one State has been regulated in the main by treaty.

Where a river forms the boundary between two States, each State is entitled to claim half the bed up to the centre line of the river, in the absence of proof that the river in fact belongs to one State only.

The Three-mile Limit

A State is entitled to the territorial jurisdiction and property in the seas which wash its coasts within a three-mile limit. It is said that this rule was based upon the assumed distance of a cannon shot from its shore. But the limit is a customary boundary.

Foreign Ships in Territorial Waters

Every State has the right to legislate in respect of its own subjects, wherever they may be, and in respect of aliens when within its own jurisdiction. The right extends over persons and property on board ships flying its own flag. A State has jurisdiction over the private vessels of a foreign nation when within its own ports or passing through its territorial waters (see Part VI, "Admiralty Law"), unless driven there by stress of weather. But a public ship, the property of a foreign State, is inviolate, as each State respects the sovereignty of another State. No public ship, however, would refuse to deliver up a criminal taking refuge on such ship who is amenable to the jurisdiction of the State within whose territorial jurisdiction the ship chances to be.

Piracy, being an offence which no nation can condone, is punishable by any State, no matter where the pirate may be seized or to what State he claims to belong.

The local authority will not enforce its laws against persons on board a foreign pirate ship within its territorial jurisdiction unless the offence is of a nature to cause disturbance to the port where the vessel is.

Criminal Jurisdiction

A State has criminal jurisdiction over its own subjects wherever they may be and wherever the offence is committed, although there may be difficulties in putting the law into force. It has jurisdiction over aliens within its territorial jurisdiction, or on board its public or private ships on the high seas. Britain assumes jurisdiction over foreigners on British ships not only on the high seas, but in foreign ports and rivers below the bridges "where the tide ebbs and flows and where great ships go".

Extradition

Extradition treaties have been made between all civilized States. These treaties provide for the delivery up of fugitive alien criminals. When such a treaty has been made with Britain, the Extradition Acts of 1870, 1873, and 1895 apply. A requisition for the surrender of a fugitive criminal must be made to a principal Secretary of State, who, if he thinks fit, may order a police magistrate to issue his warrant. Upon the arrest of the criminal his case is heard before the magistrate, and if the evidence is such that the magistrate would have committed him for trial had it been an offence committed in England, then the fugitive must be committed to a prison in Middlesex. It is the duty of the magistrate to point out to him that he cannot be surrendered for fifteen days, and that in the meantime he has the right to apply for a writ of *habeas corpus*. If this is issued, there is practically a re-hearing before the Court of King's Bench.

No fugitive criminal may be surrendered for a political crime, nor if he can prove that the object of the surrender is really to attempt to punish him for an offence of a political nature.

The foreign State must agree to return the accused if the crime for which he is extradited is not proved against him.

Fugitive criminals from one part of the British Dominions to another part can be restored to that part where the offence was committed by the Fugitive Offenders Act, 1881. This Act also applies to places over which the King has extra-territorial duties (see below).

Sailors deserting from foreign merchant ships when within British Dominions can be restored under the Merchant Shipping Act, provided that the foreign State affords the same assistance to British merchant ships. Treaties to that effect have been made with most States.

Treaties

The relations between states are regulated to a great extent by treaties to which nations are bound in honour to conform, and a flagrant breach of which would justify war. Genuine disputes naturally arise from time to time, and should be settled through the ordinary diplomatic channels or by arbitration. The power to make and ratify treaties rests in different bodies in different states. In Britain it is in the Crown, independent of Parliament. Whenever, however, legislation is necessary to give effect to a treaty, it would be usual to make the treaty subject to ratification after Parliament has passed the necessary legislation. Treaties do

not bind colonies unless the colonies are expressly included. It is the practice of Britain to include the colonies; in commercial treaties the self-governing colonies are always consulted before inclusion. Canada is granted the power of making its own commercial treaties. (See also Chapter XXIX of this Part.)

Ambassadors and Consuls

Consuls have no diplomatic rank, and are subject, generally speaking, to the local jurisdiction. (See Part II, Chapter II.) A consul, although subject to the local law, should not be subject to such laws as prevent him from performing the duties of his office, e.g. service in the army or upon a jury.

The Foreign Jurisdiction Act, 1890, provides that His Majesty may enjoy any jurisdiction in any foreign country as amply as if he had acquired jurisdiction by the cession or conquest of territory. The foreign jurisdiction is conferred on Courts by means of Orders in Council. The extra-territorial jurisdiction is, of course, in the first place permitted by treaty with the foreign potentate, unless there be no sovereign or ruler to whom the Crown can apply for the jurisdiction. In other words, the exercise of the jurisdiction is a privilege granted by the foreign sovereign. If the Order in Council purports to exceed the powers ceded to Great Britain by the foreign sovereign, it is to that extent void.

Power is given to His Majesty to exercise jurisdiction over British subjects in islands of the Pacific Ocean by the Pacific Islanders Protection Act, 1875. The judicial duties of consuls in these countries do not interfere with or abrogate their powers as ordinary consuls.

The Courts may try causes in which natives are parties, provided they are willing and it is within the powers granted by the Treaty. Usually treaties recognize the sole right of territorial Courts to deal with claims against their own subjects. In such cases a native plaintiff in a Consular Court cannot have a counterclaim brought against him unless he consents to the jurisdiction. Whenever the Consular Courts are adjudicating between a native and foreigner or a British subject, it is necessary always to determine the law to be applied in accordance with the principles of Private International Law. In many Orders the Consular Courts are given the power to deport British subjects.

Arbitration

Except with the consent of the States concerned, there is no Court to which an appeal can be made for the settlement of international disputes. By far the greater proportion of disputes are fortunately settled by ordinary diplomatic means. Few are settled by war. Still less do States now resort to acts short of war, such as "reprisals", "retaliation", and "seizure" in order to bring pressure upon an opponent. But the most welcome sign that speaks of peace is the spirit which has been growing up to settle disputes by arbitration, as in the case of disputes between private individuals. This has led to the establishment of a permanent Court of Arbitration at the Hague by the Convention signed at the Hague on 29 July, 1899, and ratified by all the civilized Powers. In case of serious disagreement or conflict, before an appeal to arms the Signatory Powers agree to have recourse, so far as circumstances allow, to the good offices of one or more friendly Powers. There is a permanent office of record attached to the Court; each country appoints four arbitrators; upon a dispute arising each disputing State selects two arbitrators, and an umpire is selected by some third Power. If a sovereign or the chief of a State is chosen as arbitrator, the arbitral procedure is settled by him. Rules of procedure have been drawn up and form part of the Convention. As a result, notable treaties have been signed, for instance, by Great Britain and France, to submit all disputes not involving questions of national honour to arbitration. Advantage of the Court has been taken in many important disputes that have arisen since its establishment, as, for example, in the case of the dispute between Great Britain and Russia in the North Sea incident during the course of the Russo-Japanese War (1904). In that case the agreement to arbitrate provided that the British and Russian Governments should each choose an arbitrator, and France and the United States of America one each, the fifth to be selected by the four arbitrators, or, failing agreement, by the Emperor of Austria.

Declaration of War

In modern times a state of war is usually declared by means of a public manifesto in the respective belligerent States with the object of informing their own subjects and those of neutral States of the position of affairs. Such a public declaration is not essential; there was no such declaration in the case of the Boer War.

Its effect is to make the subjects of the belligerent states enemies, and their property hostile, and to put an end to all commercial relations between them; contracts made between subjects of belligerent states are illegal and void. Subjects of one State within the territory of the other State at the time of the declaration are allowed a reason-

able time in which to withdraw; a similar grace is accorded for the withdrawal of property. Nor is it usual to confiscate private debts due to enemy subjects.

Once territory of a belligerent is occupied by a hostile army, martial law prevails in lieu of the civil law of the place occupied. Martial law may also be declared in times of peace. Its main effect in this country is to do away with the privilege of the writ of *habeas corpus*.

Belligerents have the right to take human life. In modern days, of course, the lives or persons of non-combatants are not harmed so long as they do no hostile acts to an invading army; and there is no right to kill prisoners who cease to offer forcible resistance.

The Convention of Geneva, 1864, which has been ratified by the Powers, mitigates the severities of war as regards the sick and wounded. A much more important convention is that of the Hague, signed 21 July, 1899, and subsequently ratified by most of the Powers, including all the great European Powers. It is termed the "International Convention with respect to the Laws and Customs of War by Land". It is a lengthy code consisting of seventy Articles dealing with the following main subjects: The qualification of belligerents; prisoners of war; sick and wounded; means of injuring the enemy; spies (to be a spy a person must act clandestinely, and must be tried for his act; if he rejoins his army he cannot subsequently be treated as a spy); flags of truce; capitulations; amnesties; military authority over hostile territory; the internment of belligerents; and the care of the wounded in neutral countries.

It is honourably understood that any Power which has ratified the convention will conform to it in the case of war.

Military Authority over Hostile Territory

It will be well to consider more closely the Articles of the above-mentioned Convention in respect of this sub-head, because it closely affects the private individual who is not a combatant. The Articles are, to a certain extent, a departure from the strict rules of international law as recognized prior to the Convention, but they will no doubt be regarded in the wars of the future.

Territory is considered occupied when it is actually placed under the authority of the hostile army. Public order and safety and the laws in force in the country must be respected as far as possible. The population cannot be compelled to take part in military operations against its own country, nor take oath to the hostile party. Family honours and rights, individual lives and private property, religious convictions and liberty must be respected. Private property cannot be confiscated; pillage is formally prohibited. If the taxes, &c., are collected, the administrative expenses of the district must be defrayed. The occupant can only make other levies for military necessities or the administration of the territory. No penalty can be inflicted upon the population for the act of an individual. Every payment of taxes must be acknowledged by a receipt. No requisitions in kind nor services can be demanded except for the necessities of the army of occupation; if not paid for in money, they must be acknowledged by a receipt. The occupant can only take possession of State property which can be used for military operations, e.g. cash, arms, stores, &c., railway plant, land telegraphs, telephones, steamers, and all kinds of war material, even though belonging to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace and indemnities paid for them. The plant of railways coming from neutral States, whether the property of those States or of private persons, must be sent back to them as soon as possible.

The occupying State is regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State and situated in the occupied country. It must protect the capital of these properties and administer it according to the rules of usufruct. The property of municipalities, of religious and charitable societies, and institutions of education, art, and science, even when State property, must be treated as private property. All seizure and destruction of or intentional damage to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings.

An International Convention for adapting to maritime warfare the principles of the General Convention of 1864 was signed on 29 July, 1899, and ratified by the Powers. It deals exhaustively with military hospital ships, to be distinguished by being painted white outside with a horizontal band of green. Private persons may fit out hospital ships which are exempt from capture, provided they have a state official commission and their names have been notified to the belligerent Powers at the commencement or during hostilities and before employed. Private hospital ships are distinguished by being painted white outside with a horizontal band of red.

Neutral merchantmen, yachts, or vessels having or taking on board the sick, wounded, or shipwrecked of the belligerents cannot be captured for

so doing, but they are liable to capture for any violation of neutrality they may have committed.

Declaration of London

A second peace conference met at the Hague on 15 June, 1907, when twelve Conventions bearing date October, 1907, were submitted for the approval of the Conference. One of the twelve, the Convention regarding the establishment of an International Prize Court, must be referred to here. The Convention, subject to ratification by the Powers, has in view an International Prize Court of Appeal. By this means it is intended to mitigate the present existing hardship that the Prize Court of the captor is the final Court. Before such a Court could be a reality, it was obvious that there must first be an unanimity among the Powers in respect of the international laws of naval warfare. In order to arrive at agreement, an International Naval Conference was held in London (December 1908–February 1909), with the result that a Declaration was made, known as the Declaration of London. This Declaration sets out the laws of naval war, and will govern the decisions of the International Prize Court if it be established under the Convention above referred to. It will also govern the decisions of the Prize Courts of the Powers who have ratified it. As it is of the highest importance to the shipping community, it must be dealt with in detail.

Blockade in Time of War

(Art. 1) A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy. (Art. 2.) In order to be binding it must be effective: that is to say, it must be maintained by a force sufficient really to prevent access to the enemy's coast line. (Art. 3.) It is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather. (Art. 5.) A blockade must be applied impartially to the ships of all nations; that is, blockade must be respected by neutrals in so far as it really remains an operation of war, which has the object of interrupting all commercial relations with the blockaded port. It may not be made the means of allowing a belligerent to favour the vessels of certain nations by letting them pass. (Art. 6.) The commander of a blockading force may give permission to a warship to enter, and subsequently to leave a blockaded port. (Art. 7.) In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there. She may obtain the food and water she requires and do necessary repairs. (Art. 9.) A declaration of blockade is made either by the blockading Power or by the naval authorities in its name. It specifies (i) the date when the blockade begins; (ii) the geographical limits of the coast line under blockade; (iii) the period within which neutral vessels may come out. (Art. 10.) If the operations of the blockading Power or of the naval authorities acting in its name do not tally with the particulars which in accordance with Art. 9 (i) and (ii) must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative. (Art. 11.) A declaration of blockade is notified (i) to neutral Powers by the blockading Power by means of a communication addressed to the Governments direct or to their accredited representatives; (ii) to the local authorities by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coast line under blockade as soon as possible. (Note that two notifications must be made. It is the duty of the neutral Governments advised of the declaration of blockade to take the necessary steps to dispatch the news to the different parts of their territory, especially their ports.) (Art. 12.) The rules as to declaration and notification of blockade apply to cases where the limits of blockade are extended, or where a blockade is re-established after having been raised. (Art. 13.) The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Art. 11. (Art. 14.) The liability of a neutral vessel to capture for a breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade. (Art. 15.) Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time. (Art. 16.) If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour and the geographical position of the vessel at the time. If through the negligence of the officer commanding the blockading force no declaration of blockade has been made to the local authorities, or if in the declaration as notified no period has been mentioned within which neutral vessels may come

out, a neutral vessel coming out of a blockaded port must be allowed to pass out free. (Art. 17.) Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective. (Art. 18.) The blockading forces must not bar access to neutral ports or coasts. (Art. 19.) Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade if at the moment she is on her way to a non-blockaded port. (Art. 20.) A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected. (Art. 21.) A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

Contraband of War

(Art. 22.) The following articles may, without notice, be treated as contraband of war, under the name of *absolute* contraband: (i) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts. (ii) Projectiles, charges and cartridges of all kinds, and their distinctive component parts. (iii) Powder and explosives specially prepared for use in war. (iv) Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts. (v) Clothing and equipment of a distinctive military character. (vi) All kinds of harness of a distinctive military character. (vii) Saddle, draught, and pack animals suitable for use in war. (viii) Articles of camp equipment and their distinctive component parts. (ix) Armour plates. (x) Warships, including boats, and their distinctive component parts of such nature that they can only be used on a vessel of war. (xi) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea. (Art. 23.) Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified. Such notification must be addressed to the Governments or other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers. (Note the right only concerns *articles exclusively used for war*, e.g. some new invention of war.) (Art. 24.) The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war under the name of *conditional contraband*: (i) Foodstuffs. (ii) Forage and grain suitable for feeding animals. (iii) Clothing, fabrics for clothing, and boots and shoes suitable for use in war. (iv) Gold and silver in coin or bullion, paper money. (v) Vehicles of all kinds available for use in war and their component parts. (vi) Vessels, crafts, and boats of all kinds; floating docks, parts of docks, and their component parts. (vii) Railway material, both fixed and rolling stock, and material for telegraphs, wireless telegraphs, and telephones. (viii) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines. (ix) Fuel, lubricants. (x) Powder and explosives not specially prepared for use in war. (xi) Barbed wire and implements for fixing or cutting the same. (xii) Horseshoes and shoeing materials. (xiii) Harness and saddlery. (xiv) Field glasses, telescopes, chronometers, and all kinds of nautical instruments. (Art. 25.) Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Arts. 22 and 24, may be added to the list of conditional contraband by a declaration which must be notified in the manner prescribed for in the second paragraph of Art. 23. (Art. 26.) If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Arts. 22 and 24, such intention must be announced by a declaration notified in the manner provided for in the second paragraph of Art. 23. (Art. 27.) Articles which are not susceptible of use in war may not be declared contraband of war. (Art. 28.) The following may not be declared contraband of war: (i) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries and yarns of the same. (ii) Oil seeds and nuts, copra. (iii) Rubber, resins, gums, and lacs; hops. (iv) Raw hides and horns, bones and ivory. (v) Natural and artificial manures, including nitrates and phosphates for agricultural purposes. (vi) Metallic ores. (vii) Earth, clays, lime, chalk, stone (including marble), bricks, slates, and tiles. (viii) Chinaware and glass. (ix) Paper and paper-making materials. (x) Soap, paint and colours (including articles exclusively used in their manufacture), and varnish. (xi) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper. (xii) Agricultural, mining, textile, and printing machinery. (xiii)

Precious and semi-precious stones, pearls, mother-of-pearl, and corals. (xiv) Clocks and watches other than chronometers. (xv) Fashion and fancy goods. (xvi) Feathers of all kinds, hair, and bristles. (xvii) Articles of household furniture and decoration, office furniture and requisites. To lessen the drawbacks of war as regards neutral trade, it has been thought useful to draw up this so-called *free list*, but this does not mean that all articles outside it might be declared contraband of war. Many Chambers of Commerce object that the free list is so restricted in character as to be of comparatively little value. But the recognition of a free list at all must be of importance to neutral countries, and there is much divergence of opinion. In answer to the objections, it is correct to say that the rule that foodstuffs, &c., acquire a contraband character only if proved to be destined for the armed forces or for a Government department of the enemy State is not an innovation in the existing law of nations; indeed, several Powers have in the past maintained that foodstuffs can be declared *absolute* contraband, and therefore liable to capture if destined merely for the peaceful inhabitants of the enemy country. As to the arguments that imports would require to be carried in British vessels, it has been said, with official approval, that our safety depends upon our being able to keep at sea not only our fighting but also our merchant ships. If our trade routes cannot be adequately defended by our Navy, then the nation must assume the financial risks to which our merchant vessels and their cargoes would be exposed, for we must keep these at sea. A war which would drive our mercantile flag from the sea and transfer our carrying trade to neutral ships would leave us in a state of hopeless bankruptcy. (Art. 29.) The following also may not be treated as contraband of war: (i) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity, and subject to the payment of compensation, be requisitioned, if their destination is that specified in Art. 30. (ii) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage. (Art. 30.) Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transhipment or subsequent transport by land. (Note that it is the *destination* of the goods which is of importance.) (Art. 31.) Proof of the destination specified in Art. 30 is complete in the following cases: (i) Where the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy. (ii) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented. (A port *occupied* by the enemy is an enemy port within the meaning of the Article.) (Art. 32.) When a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation. (Art. 33.) Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. The latter exception does not apply to a consignment coming under Art. 24 (iv). (Art. 34.) The destination referred to in Art. 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country, who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband. In cases where the presumptions do not arise, the destination is presumed to be innocent. The presumptions set up by this Article may be rebutted. (Art. 35.) Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port. The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged, and as to the port of the discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation. (Art. 36.) Notwithstanding the provisions of Art. 35, conditional contraband, if shown to have the *destination* referred to in Art. 33, is liable to capture where the enemy country has no seaboard. (Art. 37.) A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination. (Art. 38.)

A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end. (Art. 39.) Contraband goods are liable to condemnation. (Art. 40.) A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo. (Art. 41.) If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court, and the custody of the ship and cargo during the proceedings. (Art. 42.) Goods which belong to the owner of the contraband, and are on the same vessel, are liable to condemnation. (Art. 43.) If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Art. 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband. A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, provided such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities. (Art. 44.) A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship. The delivery of the contraband must be entered by the captor in the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers. The captor is at liberty to destroy the contraband that has to be handed over to him under these conditions.

Unneutral Service

(Art. 45.) A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband: (i) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy. (ii) If, to the knowledge of either the owner, master, or charterer, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy. (Art. 46.) A neutral vessel is liable to condemnation and in a general way to the same treatment as would be applicable to her if she were an enemy merchant vessel: (i) If she takes a direct part in the hostilities. (ii) If she is under the order or control of an agent placed on board by the enemy government. (iii) If she is in the exclusive employment of the enemy government. (iv) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interests of the enemy. In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation. (Art. 47.) Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel may be made a prisoner of war, even though there be no ground for the capture of the vessel.

Destruction of Neutral Prizes

(Art. 48.) A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination of all questions concerning the validity of the prize. (Art. 49.) As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Art. 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time. Great Britain has always denied the right to destroy neutral vessels under any circumstances, but other Powers have held a contrary opinon. The present articles are a compromise, as they place the onus of proof upon the captor who destroys. (Art. 50.) Before the vessel is destroyed, all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship. (Art. 51.) A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Art. 49. If he fail to do so, he must compensate the parties interested, and no examination will be made of the question whether the capture was valid or not. (It is hoped that this Article will deter any captor from recklessly destroying neutral vessels.) (Art. 52.)

If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested in place of the restitution to which they would have been entitled. (Art. 53.) If neutral goods, not liable to condemnation, have been destroyed with the vessel, the owner of such goods is entitled to compensation. (Art. 54.) The captor has the right to demand the handing over, or to proceed himself to the destruction of goods liable to condemnation found on board a vessel, not herself liable to condemnation, provided that the circumstances are such as would under Art. 49 justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the logbook of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage. The provisions of Arts. 51 and 52 respecting the obligation of a captor who has destroyed a neutral vessel are applicable.

Transfer to a Neutral Flag

(Art. 55.) The transfer of an enemy vessel to a neutral flag effected before the outbreak of hostilities is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel as such is exposed. There is, however, a presumption if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities that the transfer is void. This presumption may be rebutted. Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits earned by, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities, and if the bill of sale is not on board, the capture of the vessel gives no right to damages. (Art 56.) The transfer of an enemy vessel to a neutral flag after the outbreak of hostilities is void, unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel as such is exposed. Provided that there is an absolute presumption that a transfer is void: (i) If the transfer has been made during a voyage or in a blockaded port. (ii) If a right to re-purchase or recover the vessel is reserved to the vendor. (iii) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing have not been fulfilled.

Enemy Character

(Art. 57.) Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly. The case where a neutral vessel is engaged in a trade which is closed in time of peace remains outside the scope of this rule, and is in no wise affected by it. (Art. 58.) The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner. (Art. 59.) In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods. (Art. 60.) Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded. If, however, prior to the capture a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character. (This refers to the right of stoppage *in transitu*. See Chapter VI of this Part.)

Convoy

(Art. 61.) Neutral vessels under national convoy are exempt from search. The commander of a convoy gives in writing, at the request of a commander of a belligerent warship, all information as to the character of the vessels and their cargoes which could be obtained by search. (Art. 62.) If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the enemy must be withdrawn from such vessel.

Resistance to Search

(Art. 63.) Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture involves in all cases the condemnation

of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

Compensation

(Art. 64.) If the capture of a vessel or goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods; for instance, where the conduct of the master has given ground for suspicion, or where some or all of the ship's papers have been thrown overboard, suppressed, or intentionally destroyed on the initiative of the master or one of the crew or passengers.

It was impossible at the Conference to come to an agreement as to the conversion of merchant ships into warships on the high seas. The view of Britain is that such a conversion is unfair (i) because it gives the right to the captain to seize enemy or neutral vessels without warning; (ii) the merchant vessel can receive the hospitality of neutral ports and so move from place to place with safety until she has reached the particular point in her voyage where she might most conveniently be converted into a commerce destroyer. The Conference was unable to come to an agreement upon the question whether the *nationality*, or the *domicile* (as contended by Great Britain), of the owner should be adopted as the dominant factor in deciding whether the property is enemy property.

General Importance

The Naval Prize Bill, which dealt *inter alia* with the establishment of an International Prize Court, was, as a Government measure, duly passed by the House of Commons, but was rejected by the House of Lords on the 13th Dec., 1911. The Declaration of London, even if it be not ratified, is of importance inasmuch as it embodies rules corresponding in substance with the generally recognized principles of International Law.

The space devoted above to its consideration is therefore fully justified on general grounds, and on account of the public interest its discussion excited

Duties of Neutrals

It is the duty of a neutral country to observe strict impartiality towards the belligerents, and to do its best to prevent its subjects assisting either side. The British Foreign Enlistment Act, 1870, was passed to prevent British subjects giving armed assistance to a foreign State at war. It is a misdemeanour to accept any commission or engagement in the military or naval service of any foreign State at war with any foreign State at peace with His Majesty; or if any person goes on board any ship with the view of quitting His Majesty's dominions for such purpose; if any person within His Majesty's dominions builds, or agrees to build, or causes to be built, any vessel, having reasonable cause to believe that it will be used in the military or naval service of any State at war with any friendly State; if any person within the limits of His Majesty's dominions fits out any naval or military expedition against the dominions of any friendly State. In the case of *Rex v. Jameson* (1896) it was held that any person assisting in such an expedition is guilty of an offence, although he himself be not within the dominions.

A neutral nation cannot countenance monetary subscriptions for the use of one of two belligerent States by its individual subjects.

Privateers

By the Declaration of Paris, 1856, to which all States now adhere except Spain, Mexico, Venezuela, and the United States of America, "Privateering is and remains abolished".

Aeroplanes

Aeroplanes may well be an important feature of future warfare, and have already received the attention of the Institute of International Law which held its annual session (1911) at Madrid. Little unanimity of opinion prevailed, although it was agreed that an aeroplane should have a nationality, and should display some distinguishing mark by which it could be identified; that aviation was permissible everywhere, subject to the right of sub-jacent States to make suitable regulations for the protection of their subjects.

AUTHORITIES.—*Hall*; *Halleck*, *Foote* on "Private International Law".

CHAPTER XXVIII

STAMP DUTIES AND LICENCES

Duties administered by the Commissioners of Inland Revenue—Excise Licences and Duties—Local Taxation Licences.

In this chapter are collected together particulars of the various duties which are payable by way of Inland Revenue or Stamp Duties, Excise Duties and Licences, Local Taxation Licences and Duties under Special Statutes, with such explanatory observations as seem necessary.

DUTIES ADMINISTERED BY THE COMMISSIONERS OF INLAND REVENUE

The principal statute imposing stamp duties is the Stamp Act, 1891, as amended by later statutes. The Schedule to this Act forms the basis upon which the table of duties given below has been drawn up.

As to the form of the documents stamped and the mode of stamping, it is expressly provided that every instrument is to be so written and so stamped that the stamp may appear on the face of it, and cannot be used for or applied to any other instrument written upon the same piece of material. In the majority of cases paper impressed with the required stamp at one of the Inland Revenue offices must be used, but in some cases adhesive stamps are permitted. The conditions under which an instrument may be stamped subsequently to its execution and under which adhesive stamps may be used are set out below.

Offences

The following are offences relating to stamps: (1) To forge a die or stamp; (2) to print or make an impression upon any material with a forged die; (3) fraudulently to print, &c., from a genuine die; (4) fraudulently to cut, tear, or in any way remove from any material a stamp with intent to use it; (5) fraudulently to mutilate any stamp with intent to use any part of it; (6) fraudulently to fix or place upon any material or stamp a stamp or part of a stamp removed from any other material or stamp; (7) fraudulently to erase or remove from any stamped material a name, sum, date, or other matter or thing with intent to use the stamp upon such material; (8) knowingly to sell or utter or use any forged stamp, &c.; and (9) to have without lawful excuse in one's possession any forged die or stamp. Each of the above offences is a felony, rendering the person convicted liable to penal servitude for fourteen years or to imprisonment with or without hard labour for two years. It is also a felony, rendering liable to penal servitude for seven years or to imprisonment with or without hard labour for two years, to make or cause to be made or have in one's possession paper manufactured in imitation of that provided by the Commissioners of Inland Revenue. The purchase or being in possession of paper manufactured for the Commissioners of Inland Revenue, or of any die, mould, &c., used in the manufacture of such paper is a misdemeanour rendering liable on conviction to imprisonment with or without hard labour for two years. Adhesive stamps must not be defaced before use under penalty of a fine of £5.

Adhesive Stamps

Adhesive stamps up to 2*s.* 6*d.* are permitted in the case of agreements liable to the 6*d.* duty,

bills of exchange drawn out of the United Kingdom or (including cheques) drawn in the United Kingdom and payable on demand, certified copies and extracts from registers of births, &c., charter parties, leases for not exceeding a year at a rent not exceeding £10, letters of renunciation, notarial acts, policies of insurance other than marine or life policies, protests, proxies liable to the 6*d.* duty, receipts, voting papers, and warrants for goods. In these cases postage stamps may be used. For contract notes, &c., there are special adhesive stamps. An instrument is not deemed to be duly stamped with an adhesive stamp unless cancelled by the proper party writing on or across the stamp his name or initials, together with the true date of his so writing. Neglect to cancel an adhesive stamp as aforesaid is punishable by a fine of £10. Fraudulently to remove from an instrument an adhesive stamp, or to affix such stamp to another instrument, or to sell or utter such stamp renders anyone liable to a fine of £50.

Stamps appropriated by words on the face thereof to some particular class of instruments are not available for any other class of instruments.

Affixed Stamps

In the case of many documents, for instance, bills of exchange (except as before-mentioned), bills of lading, marine policies, proxies, and voting papers, stamps must be affixed before execution; but where this is not required by the Stamp Act, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof on payment of the unpaid duty and a penalty of £10, and also, by way of further penalty where the unpaid duty exceeds £10, of interest at the rate of 5 per cent. Instruments charged with *ad valorem* duty may be stamped within thirty days after execution or after being received in the United Kingdom, or, where the opinion of the Commissioners of Inland Revenue has been required (see below), within fourteen days after notice of the assessment. The obligee, transferee, lessee, or other person taking the security, and the settlor in the case of a settlement, are liable, when an instrument is omitted to be stamped, to a fine of £10, besides the penalty payable on stamping, and a further penalty equivalent to the stamp duty in the absence of a reasonable excuse.

In accordance with the regulations of the Commissioners of Inland Revenue, any person may claim their opinion with reference to an executed instrument as to whether such instrument is chargeable, and with what amount of duty. Such instrument will then be assessed accordingly.

As to spoiled stamps, application may be made within two years for an allowance in respect thereof.

Should an instrument chargeable with duty be produced unstamped or insufficiently stamped in any court of civil judicature or before an arbitrator or referee, judicial notice is to be taken of the omission, and if it is an instrument which may be stamped after execution, then, on payment of the amount of the unpaid duty, together with the penalty payable on stamping and a further sum of £1, it may be received in evidence.

Dealers in Stamps

It may be remarked in conclusion that the Commissioners of Inland Revenue may grant licences to persons to deal in stamps, and that unauthorized persons dealing in stamps incur a fine of £20. Authorized persons must affix to their premises the words "Licensed to Sell Stamps". The use of such words by unauthorized persons renders them liable to a fine of £10.

Alphabetical Table of Duties

Admission. See "Advocate", "Barrister-at-Law", "Burgess", "Medical Profession", "Solicitor".

Advocate.—On admission in Scotland, £50.

NOTE.—An Irish barrister-at-law on admission to the Scottish bar pays a duty of £10 only, while an English barrister-at-law on admission is totally exempted from duty.

Affidavit and *Statutory Declaration* (not for the primary purpose of being used in Court), 2*s.* 6*d.*

EXEMPTIONS.—Affidavits made upon requisition of commissioners of revenue, or required by law, or at the Banks of England and of Ireland on the death of or to identify proprietors of stock, &c., or with reference to the loss, &c., of bank notes or bills, or requisite for a marriage without licence, or on application for a patent.

Agreement or *Memorandum of Agreement.*—Under hand only and without any clause of registration, and not otherwise specifically charged with any duty, 6*d.*

NOTE.—This duty of sixpence may be denoted by an adhesive stamp, cancelled by the person first executing the agreement.

EXEMPTIONS.—Agreements whereof the matter is not of the value of £5; for the hire of any labourer, artificer, manufacturer, or menial servant; relating to the sale of goods or merchandise; between the master and mariners of any ship for wages in respect of any coast voyage in the United Kingdom; between a landlord and tenant under sections 8 (6) and 20 (2) of the Land Law (Ireland)

Act, 1881; and for the vesting of land in district councils, or for the letting of colleges under the Labourers (Ireland) Acts.

Alkali or *Cement Works.*—On certificate of registration, £5.

Allotment, Letter of, and *Letter of Renunciation* of stock or shares of a nominal value of £5, 6*d.*; of a less nominal value than £5, 1*d.*

Annuity. See "Bond", "Conveyance", "Mortgage", &c.

Appointment of a new trustee, or in execution of a power, by any instrument not being a will, 10*s.*; of a gamekeeper, 10*s.*

Appraisement or *Valuation* of any work or property where the amount does not exceed £5, 3*d.*; £10, 6*d.*; £20, 1*s.*; £30, 1*s.* 6*d.*; £40, 2*s.*; £50, 2*s.* 6*d.*; £100, 5*s.*; £200, 10*s.*; £500, 15*s.*; exceeding £500, £1.

EXEMPTIONS.—Valuations made for the use of one party only and not obligatory either by agreement or by law; valuations of the property of deceased persons with a view to probate or administration, &c., and valuations ordered by the Court of Admiralty.

Apprenticeship, Instrument of, 2*s.* 6*d.*

EXEMPTIONS.—Parish and charity apprenticeships, and, in Ireland, where the premium or consideration does not exceed £10.

Arms.—(1) On grant of, £10; (2) change of, by letters patent, in compliance with any will or settlement, £50; (3) upon voluntary application, £10. And see "Armorial Bearings" under "Local Taxation Licences".

Articles of Clerkship. See "Solicitor".

Assignment or *Assignation.* See "Conveyance", "Mortgage", &c.

Assurance. See "Insurance".

Attorney, Power of, and *Commission, Factory, Mandate.*—For the sole purpose of authorizing a proxy to vote at any one meeting, whether the number of persons named in such instrument be one or more, 1*d.*

For the receipt of dividends or interest of any stock, in respect of one payment only, 1*s.*; in any other case, 5*s.*

For the receipt of any sum of money, or bill of exchange, &c., for any sum of money not exceeding £20, or of any periodical payments not exceeding the annual sum of £10, 5*s.*

For the sale, transfer, or acceptance of any Government or Parliamentary stocks or funds of a nominal value not exceeding £100, 2*s.* 6*d.*; in any other case, 10*s.*

For the receipt of naval prize money or wages, 1*s.*

Of any kind whatsoever not hereinbefore described, 10*s.*

EXEMPTIONS.—Powers of attorney filed in the Probate Division of the High Court of Justice in England or Ireland, or in any ecclesiastical court; powers of attorney for the receipt of dividends of less than £3 per annum from Government or Parliamentary stocks or funds; and orders or requests under hand of the proprietors only to pay dividends or interest to any named persons. And see "Warrant of Attorney".

Award or *Decreet Arbitral,* 10*s.*

Back Bond or *Back Letter.* See "Mortgage", &c.

Bank Note.—For not exceeding £1, 5*d.*; £2, 10*d.*; £5, 1*s.* 3*d.*; £10, 1*s.* 9*d.*; £20, 2*s.*; £30, 3*s.*; £50, 5*s.*; £100, 8*s.* 6*d.* And see "Cheque".

Banker's Annual Licence, £30.

Barrister-at-Law.—On admission to be a member of an Inn of Court in England or a student of King's Inn in Dublin, £25.

EXEMPTIONS.—A member joining a second Inn of Court in England, or a student of King's Inn joining any of the Inns of Court in England.

On admission to the degree of barrister-at-law in England or Ireland, £50.

NOTE.—An Irish barrister-at-law on admission to the English bar, or an English barrister-at-law or Scottish advocate on admission to the Irish bar, pays only £10, while a Scottish advocate on admission to the English bar is totally exempted from duty.

Bill of Exchange.—For the stamp duties on bills of exchange and promissory notes, see Part III, Chapter VII.

Bill of Lading, 6*d.*

NOTE.—A bill of lading cannot be stamped after execution.

Bill of Sale. See "Conveyance", "Mortgage".

Bond, Covenant, or *Instrument.*—(1) For the payment of money or transfer of stock (see "Marketable Security", "Mortgage", &c.); (2) upon the original creation of an annuity (see "Conveyance"); (3) to secure an annuity (*a*) for a definite period, the same *ad valorem* duty as for a bond or covenant for the total amount (see "Mortgage"), (*b*) for life or any other indefinite period, for every £5 of the sum periodically payable, 2*s.* 6*d.*, or, in the case of a collateral security, 6*d.*; (4) on obtaining letters of administration or confirmation to an estate exceeding £100 in value, 5*s.* (near relations of soldiers and marines are exempted); (5) in respect of customs or excise duties, 5*s.*, or, where the penalty does not exceed £150, the same *ad valorem* duty as a bond for the amount of the penalty; (6) of any kind whatsoever not specifically charged with any duty, 10*s.*, or, where the amount recoverable does not exceed £300, the same *ad valorem* duty as a bond for the amount recoverable.

Burgess.—Admission as, in England or Ireland

in respect of birth, apprenticeship, or marriage, or in Ireland in respect of trade, £1; upon any other ground, £3; in Scotland, 5s.

EXEMPTIONS.—Admission to the freedom of the City of London by redemption, or to the freedom of the Company of Watermen and Lightermen of the River Thames.

Capital Duties. See "Companies".

Certificate.—(1) Of birth, baptism, marriage, death, or burial, 1d.; (2) annual, entitling a solicitor, conveyancer, notary public, &c., to practise within ten miles of the General Post Office, London, within the city or shire of Edinburgh, or within the city of Dublin or three miles therefrom, £9; in other parts of the United Kingdom, £6.

NOTE.—Where the solicitor, &c., has not been admitted or carried on business for three years, the duties are half the above amounts.

Change of Name by letters patent, in compliance with any will or settlement, £50; upon voluntary application, £10.

Charter of resignation, confirmation, &c., in Scotland, 5s.

Charter Party, 6d.

Cheque or draft, payable on demand or to order, 1d.

Clare Constat. See "Precept".

Collateral Security. See "Bond", "Mortgage", &c.

Colonial Security. See "Marketable Security".

Commission of Lunacy, 5s.

Companies.—On registration, with a capital of £2000, £2; exceeding that amount, for every £1000 up to £5000, £1; up to £100,000, 5s.; after that, 1s. (maximum fee, £50).

On registration of any document or fact, 5s.

On registration of a mortgage, up to £200, 10s.; above £200, £1. Both Memorandum and Articles of Association require a deed stamp of 10s.

Share Capital duty is payable on the nominal capital, for every £100 thereof, 5s.

Loan Capital duty is payable on issues by Local Authorities, Corporations, &c., for every £100 of the amount secured, 2s. 6d. (2s. in the £ is repayable in the case of conversion of an existing loan). And see "Corporate and Unincorporate Bodies".

Conditional Surrender of copyhold. See "Mortgage", &c.

Contract. See "Agreement".

Contract Note for the sale or purchase of any stock or marketable security of the value of £5 and not exceeding £100, 6d.; £500, 1s.; £1000, 2s.; £1500, 3s.; £2500, 4s.; £5000, 6s.; £7500, 8s.; £10,000, 10s.; £12,500, 12s.; £15,000, 14s.; £17,500, 16s.; £20,000, 18s.; exceeding £20,000, £1.

NOTE.—The stamp duty in respect of option contracts or contract notes following duly stamped option contracts is one-half of the above rates; but where a double option is given or taken, the contract is to be deemed a separate contract in respect of each option. In the case of a continuation or carrying-over note, the note, although made in respect of both a sale and a purchase, is chargeable in respect of such one of those transactions only as carries the highest rate.

Conveyance or *Transfer.*—(1) Whether on sale or otherwise, of Bank of England Stock, 7s. 9d.; of Canada Inscribed Stock or Colonial Stocks within the Colonial Stock Act, 1877, for every £100 of the nominal amount of such stock or stocks, 2s. 6d. (unless compounded for). (2) On sale of any stock, or marketable security (except such stock or stocks as aforesaid), where the amount or value of the consideration for the sale does not exceed £5, 6d.; £10, 1s.; £15, 1s. 6d.; £20, 2s.; £25, 2s. 6d.; for every additional £25 up to £300, 2s. 6d.; for every £50 after that, 5s. (3) On sale of any property not comprised within the terms "stock" or "marketable security", where the amount or value of the consideration for the sale does not exceed £5, 1s; £10, 2s.; £15, 3s.; £20, 4s.; £25, 5s., for every additional £25 up to £300, 5s.; for every £50 after that, 10s. (but where the amount or value of the consideration for the sale does not exceed £500, and the instrument contains a statement certifying that the transaction is not part of a larger transaction or series of transactions with a total or aggregate consideration exceeding £500, half the above rates of duty are charged). (4) On any voluntary disposition *inter vivos*, the like stamp duty as on a sale with the substitution of the value of the property conveyed or transferred for the amount or value of the consideration for the sale. (5) On any grant or contract for payment of a superannuation annuity, for every £5, 6d. (6) By way of security of any property (except such stock as aforesaid), or of any security, see "Marketable Security", "Mortgage". (7) Of any kind not hereinbefore described, 10s.

Copy or *Extract*, attested or authenticated, of any instrument or record, 1s., or, in the case of an instrument chargeable with duty not amounting to one shilling, the same duty as such instrument.

NOTE.—A copy or extract of or from any law proceeding is exempt. And see "Certificate".

Copyhold and *Customary Estates.*—On sale, mortgage, or demise thereof, see "Conveyance", "Mortgage", "Lease"; upon any other occasion, 10s.

Corporate and Unincorporate Bodies.—Upon the net annual value, income, or profits accrued in respect of their real and personal property, per cent, £5 (with certain exemptions, as to which

see "Customs &c. Act, 1885"). And see "Companies".

Covenant to secure the payment or repayment of money, or the transfer or retransfer of stock, see "Mortgage"; in relation to any annuity, see "Bond", "Conveyance"; on the sale or mortgage of any property (not being an instrument chargeable with *ad valorem* duty as a conveyance or mortgage), 10*s*., or where the *ad valorem* duty in respect of the consideration or mortgage money does not exceed 10*s*., a duty equal to the amount of such *ad valorem* duty.

Customs.—(1) On certificate of goods, &c., entered inwards, and intended to be exported, with a view to receiving a drawback of any duty of customs, 4*s*.; (2) on certificate or debenture entitling to a drawback payable out of the revenue of customs or excise in respect of goods exported to foreign countries, for an allowance not exceeding £10, 1*s*.; £50, 2*s*. 6*d*.; exceeding £50, 5*s*. And see "Bond".

Debenture to secure the payment or repayment of money or the transfer or retransfer of stock, see "Marketable Security", "Mortgage".

Declaration of any use or trust by writing not a will or chargeable with *ad valorem* duty as a settlement, 10*s*. And see "Affidavit".

Decreet Arbitral. See "Award".

Deed of any kind whatsoever, not coming under any special head, 10*s*. And see "Bond", "Covenant", "Mortgage", &c.

Defeasance, Instrument of, in respect of marketable securities under hand only, see "Agreement"; apparently absolute, but intended only as a security, see "Mortgage".

Delivery Order, 1*d*.

Demise. See "Lease".

Deposit of title deeds. See "Mortgage".

Deputation of a gamekeeper. See "Appointment".

Dispensation. See "Faculty".

Disposition of heritable property in Scotland. See "Conveyance", "Mortgage".

Dock Warrant. See "Warrant for Goods".

Docket, on passing any instrument under the Great Seal, 2*s*.

Draft. See "Bill of Exchange"

Duplicate or *Counterpart* of any instrument chargeable with duty, 5*s*.; but where such duty does not amount to 5*s*., then the same duty as on the original instrument.

Ecclesiastical Licence.—(1) Of building for divine service, &c., 10*s*.; (2) to hold the office of lecturer, &c., 10*s*.; (3) not otherwise charged, £2.

Eik to a reversion. See "Mortgage".

Equitable Mortgage. See "Mortgage".

Estate Duty on the principal value of all property, real and personal, settled or not settled, passing on a death, and exceeding £100 but not £500, at the rate per cent of £1; £1000, £2; £5000, £3; £10,000, £4; £20,000, £5; £40,000, £6; £70,000, £7; £100,000, £8; £150,000, £9; £200,000, £10; £400,000, £11; £600,000, £12; £800,000, £13; £1,000,000, £14; exceeding £1,000,000, £15.

NOTE.—Small estates not exceeding £500 gross value may be charged with the fixed duties of 30*s*. for up to £300, and 50*s*. for up to £500, instead of at the above rates, and such estates are exempt from all other death duties. Gifts of £100 and upwards made by the deceased within three years of his death, other than gifts for public and charitable purposes, or in consideration of marriage, or as part of the deceased's reasonable normal expenditure, are part of his estate for the purpose of estate duty. Interest at the rate of 3 per cent per annum is payable on the Estate Duty in respect of personalty from the date of death to that of delivery of the account.

Settlement Estate Duty further is payable at the rate of £2 per cent upon property liable to Estate Duty settled by the will of the deceased or previously settled and passing under the settlement on the death of the deceased to some person not competent to dispose of it. Neither Settlement Estate Duty nor Legacy or Succession Duty is payable where the net value of an estate does not exceed £1000. Payment of Estate Duty on real property may be by eight yearly or sixteen half-yearly instalments, and, by agreement with the Commissioners, payment of Estate or Succession Duty may be, wholly or in part, in the form of real or leasehold property comprised in the estate.

Exchange or *Excambion*, Instrument effecting, where the consideration exceeds £100, the same *ad valorem* duty as in the case of a conveyance on sale; in other cases, 10*s*.

Exemplification or *Constat* under the Great Seal, £5; under the seal of any court in England or Ireland, £3.

Extract. See "Copy".

Factory. See "Attorney, Power of".

Faculty, *Licence*, *Commission*, or *Dispensation* in England, £30; in Ireland, £25, except for admission as a notary public, in which case, in Scotland or Ireland, the duty is £20.

Feu Contract. See "Conveyance".

Foreign Security. See "Marketable Security".

Gamekeeper, Appointment of. See "Appointment".

Grant. See "Arms", "Conveyance", "Letters Patent", "Lunacy".

Heritable Bond. See "Mortgage".

Hire-Purchase Agreement under hand, 6*d*.; under seal, 10*s*.

House Duty on inhabited farmhouses, public-houses, warehouses, lodging-houses, and the like, of an annual value of £20 and not exceeding £40, 2*d.* in the £; £60, 4*d.* in the £; exceeding £60, 6*d.* in the £. For ordinary dwelling-houses the rates respectively are, 3*d.*, 6*d.*, and 9*d.* In the case of a house let in tenements or flats, the value of any dwelling in the house of a less annual value than £20 is excluded in computing the annual value of the house, but dwellings in the house of an annual value of £20 are charged the 3*d.* rate for up to £40, and the 6*d.* rate for up to £60.

Income Tax. See "Property and Income Tax".

Increment Value Duty. See "Land Value Duties".

Indemnity, Policy of, against loss under the Employers' Liability Act, 1880, or the Workmen's Compensation Act, 1906, where the annual premium does not exceed £2, 1*d.*; exceeds £2, under hand, 6*d.*; under seal, 10*s.*

Inebriates, Licence for retreat for, £5.

NOTE. — 10*s.* additional is payable for every patient over and above the number of ten.

Inn of Court. See "Barrister-at-Law".

Insurance.—(1) Marine, where the premium does not exceed 2*s.* 6*d.* per cent of the sum insured, 1*d.*; in any other case, (*a*) for any voyage, in respect of every £100, 1*d.*; (*b*) for time, in respect of every £100, for not exceeding six months, 3*d.*; for not exceeding twelve months, 6*d.* (NOTE.—Where a time policy contains a continuation clause there is an additional duty of 6*d.* The penalty for fraud or evasion of duty is £100.) (2) Life, where the sum insured does not exceed £10, 1*d.*; £25, 3*d.*; £500, for every £50, 6*d.*; £1000, for every £100, 1*s.*; where the sum insured exceeds £1000, for every £1000, 10*s.* (3) Accident, in respect of accidental death, personal injury, sickness, or loss or damage to property, 1*d.* And see "Indemnity".

Inventory Duty. See "Estate Duty".

Land Tax does not exceed 1*s.* in the £.

NOTE.—This tax has to a large extent been redeemed. Owners of land subject to the tax with incomes not exceeding £160 are exempted, while those with incomes not exceeding £400 may, before payment, claim a remittance of one-half of the tax.

Land Value Duties (see also Part I, Chapter VIII).—(1) Increment Value Duty, £1 for every complete £5 of the increment value of land; (2) Reversion Duty, £1 for every £10 of the value of the benefit accruing to the lessor on the determination of a lease; (3) Undeveloped Land Duty ½*d.* annually for every £1 of the site value of the land; (4) Mineral Rights Duty, 1*s.* annually for every £1 of the rental value of rights to work minerals.

NOTE.—Increment Value Duty is payable (*a*) on any transfer or sale of land, (*b*) on any lease for more than fourteen years, (*c*) on death (in the case of corporations, every fifteen years). Exempt from the duty are agricultural land, small residences in the owners' own occupation, separate flats, &c. There are similar exemptions in the case of the Reversion Duty and Undeveloped Land Duty. Common clay, brick earth, sand, chalk, limestone, and gravel are free of Mineral Rights Duty. Increment Value Duty is not charged where Reversion Duty has been paid on the same benefit, nor is Reversion Duty charged in the reverse case; also the former duty is not charged on the grant, and the latter duty is not charged on the determination of a mining lease. Copies of the rules relating to these duties can be had of the Commissioners of Inland Revenue, Somerset House, London, and at principal post offices. And see Part I, Chapter VIII.

Lease or *Tack.*—(1) For any definite term not exceeding a year of any dwelling-house or part of such house at a rent not exceeding £10 per annum, 1*d.*; (2) for any definite term less than a year of any furnished house or apartments at a rent for such term exceeding £25, 5*s.*; (3) for any definite or indefinite term of any lands, tenements, &c., except or otherwise than as aforesaid, at a rent of—

	If the term does not exceed 35 years or is indefinite.			If the term exceeds 35 years but not 100 years			If the term exceeds 100 years		
	£	*s*	*d*	£	*s.*	*d*	£	*s.*	*d.*
Not exceeding £5 per annum	0	1	0	0	6	0	0	12	0
Exceeding—									
£5 and not exceeding £10	0	2	0	0	12	0	1	4	0
£10 „ „ £15	0	3	0	0	18	0	1	16	0
£15 „ „ £20	0	4	0	1	4	0	2	8	0
£20 „ „ £25	0	5	0	1	10	0	3	0	0
£25 „ „ £50	0	10	0	2	0	0	6	0	0
£50 „ „ £75	0	15	0	4	10	0	9	0	0
£75 „ „ £100	1	0	0	6	0	0	12	0	0
£100, for every £50	0	10	0	3	0	0	6	0	0

(4) of any other kind whatsoever not hereinbefore described, £1.

Legacy and Succession Duty.—The rate is 1 per cent in the case of lineal ancestors and descendants, widowers, and widows; 5 per cent in the case of brothers and sisters and the wives and husbands and descendants of such; and 10 per cent in the case of uncles and aunts and their wives and husbands and descendants and other persons related to the deceased and strangers in blood.

NOTE.—The 1-per-cent duty is not charged (*a*) in the case of estates not exceeding £15,000, (*b*)

in the case of a legacy or succession not exceeding £1000 in the aggregate (or not exceeding £2000 in the case of a widow or child under twenty-one years of age). Legacies for objects of national, scientific, historic, or artistic importance are also exempted from duty. As to small estates, see under "Estate Duty".

Letter of Allotment and *Letter of Renunciation.* See "Allotment, Letter of".

Letter of Attorney. See "Attorney, Power of".

Letter of Credit. See "Bill of Exchange".

Letter of Reversion. See "Mortgage".

Letters of Marque and Reprisal, £5.

Letters Patent, Grant or, (1) of the honour or dignity of a duke, £350; a marquis, £300; an earl, £250; a viscount, £200; a baron, £150; a baronet, £100; (2) of a *congé d'élire* for the election of an archbishop or bishop, and of any other honour, dignity, or promotion, or franchise, liberty, or privilege, £30; (3) in respect of an invention, on application for provisional protection, £1; on filing complete specification, £3; on sealing, £1; on application for renewal in respect of fifth year, £5; sixth year, £6; seventh year, £7; eighth year, £8; ninth year, £9; tenth year, £10; eleventh year, £11; twelfth year, £12; thirteenth year, £13; and fourteenth year, £14. And see "Arms", "Change of Name".

Licence. See "Ecclesiastical Licence", "Faculty", "Lunacy", "Marriage Licence".

Lunacy.—Grant of custody of person or estate of lunatic, £2; licence for house, 10*s.*

Marketable Security and *Foreign* or *Colonial Share Certificate.*—(1) Colonial government or the like security, the same *ad valorem* duty as upon a *Mortgage* (which see). (2) Foreign government or colonial municipal, &c., security negotiated in the United Kingdom for every £10, 1*s.* (3) Other than a colonial government or colonial municipal security, or a share warrant, stock certificate to bearer or the like, dated on or before August 6, 1885, double the duty on a *Mortgage* (which see); if dated after August 6, 1885, for every £10, 2*s.*, and if given in substitution for a like security for every £20, 1*s.* (4) Transfer, assignment, &c., of any marketable security, see "Conveyance", "Mortgage"; in any other case than a sale or mortgage, 10*s.* And see "Scrip Certificate".

Marriage Licence.—(1) Special, in England or Ireland, £5; (2) not special, in England, 10*s.*

Marriage Settlement. See "Settlement".

Medical Profession.—On admission as a Fellow of the College of Physicians, £25.

Memorial relating to registration of deeds in England or Ireland, 2*s.* 6*d.*, except where the instrument registered bears a duty not amounting to 2*s.* 6*d.*, in which case the like duty is chargeable as on the principal instrument.

Mineral Rights Duty. See "Land Value Duties".

Money Lender, Registration of, £1.

Mortgage, Bond, Debenture, Covenant (other than a marketable security specially charged), and *Warrant of Attorney* (1) to confess and enter up judgment for not exceeding £10, 3*d.*; £25, 8*d.*; £50, 1*s.* 3*d.*; £100, 2*s.* 6*d.*; £150, 3*s.* 9*d.*; £200, 5*s.*; £250, 6*s.* 3*d.*; £300, 7*s.* 6*d.*; exceeding £300, for every £100, 2*s.* 6*d.*; (2) being a collateral, or additional, or substituted security (other than an equitable mortgage), for every £100, 6*d.*; (3) being an equitable mortgage for every £100, 1*s.*; (4) transfer, assignment, &c., of any mortgage, &c., for every £100, 6*d.*; and also where further money is secured, the like duty as a principal security for such further money; (5) reconveyance, release, discharge, renunciation, &c., of any mortgage, &c., for every £100, 6*d.*

Mutual Disposition in Scotland. See "Exchange".

Name. See "Change of Name".

Notarial Act of any kind (other than a *Protest*, which see), 1*s.*

Notary Public. See "Solicitor".

Notice to Quit under Irish Land Act, 1870, 2*s.* 6*d.*

Order for payment of money. See "Bill of Exchange".

Partition or *Division*, Instrument effecting, 10*s.*; except where the consideration exceeds £100, in which case the same *ad valorem* duty is chargeable as on a conveyance on sale. See "Conveyance".

Passport, 6*d.*

Patent. See "Letters Patent".

Policy of Insurance. See "Insurance".

Power of Attorney. See "Attorney, Power of".

Precept of Clare Constat in Scotland, 5*s.*

Procuration, Deed or instrument of, 10*s.*

Promissory Note. See "Bill of Exchange".

Property and Income Tax (see also Part I, Chapter VIII).—Schedule A: Lands, Tenements, &c., 1*s.* 2*d.* in the £1; Schedule B: Nurseries and Market Gardens, 1*s.* 2*d.* (or 1*s.* for an earned income of between £2000 and £3000; or 9*d.* for an earned income not exceeding £2000); Schedule C: Dividends or Annuities from Government Stocks, &c., 1*s.* 2*d.*; Schedule D: Trades, Professions, Interest, &c., 1*s.* 2*d.* (or 1*s.* or 9*d.* in the cases mentioned under Schedule B above); Schedule E: Salaries, Pensions, &c., 1*s.* 2*d.* (or 1*s.* or 9*d.* in the cases mentioned under Schedule B above).

NOTE.—The tax under Schedule A is payable by the tenant, but the landlord must allow deduc-

tion from the next payment of rent. There is a special allowance of one-eighth for land and one-twelfth for houses for maintenance, repairs, &c., in respect of property of an annual value not exceeding £8. As to the tax on incomes, an income not exceeding £160 is exempt, and from incomes not exceeding £400, £500, £600, and £700 abatements of £160, £150, £120, and £70 respectively may be claimed. Further, anyone whose income does not exceed £500 may claim an allowance of £10 in respect of each child under the age of sixteen years. On incomes exceeding £5000 (with the exception of the first £3000) a super tax of 6*d.* in the £ is charged (and see Part I, Chapter VIII).

Protest of any bill of exchange, 1*s.*; except where the duty on the bill does not exceed that amount, in which case the same duty as the bill.

Proxy. See "Attorney, Power of".

Receipt for £2 or upwards, 1*d.*

NOTE.—Exempt are deposits of money with any banker, payments of H.M.'s taxes and duties, and the like. The penalty for giving a receipt not duly stamped, or refusing to give a receipt duly stamped, or separating amounts so as to avoid the duty is a fine of £10.

Reconveyance, *Release*, or *Renunciation* of any security. See "Conveyance", "Mortgage".

NOTE.—In any case not specially charged the duty is 10*s.*

Release. See "Reconveyance".

Renunciation. See "Allotment, Letter of", "Reconveyance".

Resignation in Scotland, 5*s.*

Reversion Duty. See "Land Value Duties".

Revocation of any use or trust by writing not a will, 10*s.*

Scrip Certificate, Scrip, &c., 1*d.*

Seisin, Instrument of, in Scotland, 5*s.*

Settlement, whether voluntary or for a consideration, for every £100 settled, 5*s.*

NOTE.—Instruments of appointment are exempt.

Settlement Estate Duty. See "Estate Duty".

Share Certificate, Foreign and Colonial. See "Marketable Security".

NOTE.—If to bearer on first negotiation in the United Kingdom, for every £25, 3*d.* On a *Share Warrant* or *Stock Certificate* to bearer a duty of £1, 10*s.* per cent of the nominal value is charged; and in the case of such an issue by a foreign or colonial company, or first negotiation in the United Kingdom, for every £10, 2*s.*

Solicitor.—(1) On articles of clerkship to, in England or Ireland, £80; in Scotland, in the Court of Session, £60; in the Sheriff Court, 2*s.* 6*d.* (2) On admission as a solicitor of the Supreme Court in England or of the Court of Judicature in Ireland, £25; as a law agent to practise before the Court of Session or as a writer to the signet (the duty on the articles of clerkship having been previously paid), £25 (if previously admitted as a law agent to practise before the Sheriff Court, £30); as a law agent to practise before the Sheriff Court (the duty on the articles of clerkship having been previously paid), £54, 17*s.* 6*d.*; as a notary public, in England, £30; in Scotland or Ireland, £20.

Stock Certificate. See "Share Certificate".

Succession Duty. See "Legacy and Succession Duty".

Super Tax. See "Property and Income Tax".

Surrender, not being a conveyance on sale or a mortgage, 10*s.* And see "Copyhold".

Tack. See "Lease", "Mortgage".

Transfer. See "Conveyance", "Marketable Security", "Mortgage".

Trustee, Appointment of, see "Appointment"; retirement of, 10*s.*

Undeveloped Land Duty. See "Land Value Duties".

Valuation. See "Appraisement".

Voting Paper, 1*d.*

Warrant under the King's sign manual, 10*s.*

Warrant for Goods, 3*d.*

NOTE.—Any writing given by an inland carrier acknowledging the receipt of goods conveyed is exempt, and so also is a weight note issued together with a duly stamped warrant.

Warrant of Attorney to confess and enter up a judgment given as a security for money, see "Mortgage"; of any other kind, 10*s.*

Workmen's Compensation Act, Insurance against. See "Indemnity".

Writ of Acknowledgment, or *of Resignation* and *Clare Constat*, in Scotland, 5*s.*

EXCISE LICENCES AND DUTIES

The moneys arising from excise licences and duties are paid into the Exchequer as part of the Consolidated Fund of the United Kingdom. In some cases, however, the duties are applied to the relief of local taxation.

Excise licences must set out the names and places of abode of the licensees and the purposes for which the licences are granted; also, in the majority of cases, the dates when the licences are granted and the places of business to which they apply. Licensed traders are required to exhibit inscriptions on their premises, and unlicensed per-

sons may not ostensibly carry on businesses requiring licences under a penalty of £20. Contravention of a licence also renders one liable to a penalty. There is, further, a penalty of £20 for the non-production of a licence within a reasonable time after demand by an officer.

Permits and Certificates are granted by or by order of officers of Inland Revenue authorizing the removal of dutiable goods. A drawback means a repayment of duty already paid, usually upon the exportation of the goods in respect of which the duty has been paid.

Officers have a general power of taking samples of goods liable to excise or customs duties. Power to search and seize forfeited goods may be had by special warrant of the Commissioners or Justices of the Peace. Forfeited goods will be disposed of according to prescribed regulations.

Alphabetical Table of Duties

Appraisers.—Annually (July 5), £2.

NOTE.—The penalty for appraising without a licence is £50. Licensed appraisers may act as house agents without further licence, and auctioneers are exempted from the necessity of taking out the appraiser's licence.

Auctioneers.—Annually (July 5), £10.

NOTE.—The penalty for acting as an auctioneer without a licence is £100. (See Part III, Chapter VI.) A licensed auctioneer may act as an appraiser or as a house agent without further licence.

Beer Manufacture.—Upon every standard barrel of 36 gal. of specific gravity 1055°, 7*s.* 9*d.*

NOTE.—A person who brews without a licence is liable to a penalty of £100 and forfeiture of the beer, &c.; but occupiers of houses of an annual value not exceeding £8 may, without licence, brew for their own domestic use. Brewers for sale (that is, retailers of beer and brewers for the use of any other person at any other place than the premises of the person for whom the beer is brewed) pay according to the number of barrels brewed during the preceding year, namely, not exceeding 100 barrels, £1; exceeding 100 barrels, for the first 100 barrels, £1; and for every further 50 barrels, 12*s.* Brewers other than for sale, occupying houses of an annual value exceeding £10 and not exceeding £15, and brewing solely for their own domestic use, pay 9*s.*, and in any other case 4*s.*

Beer, Dealing in.—A wholesale beer-dealer's licence is subject to a duty of £10, 10*s.* A retailer pays in respect of a beerhouse on-licence a duty equal to a third of the annual value of the licensed premises, subject to a minimum duty as follows:—

Population.	Minimum Duty. Publican's Licence. £	s.	d.	Beerhouse Licence. £	s.	d.
In GREAT BRITAIN—						
In areas not urban, or urban with a population of less than 2000	5	0	0	3	10	0
In urban areas with a population of—						
2,000 and less than 5,000 ...	10	0	0	6	10	0
5,000 „ 10,000 ...	15	0	0	10	0	0
10,000 „ 50,000 ...	20	0	0	13	0	0
50,000 „ 100,000 ...	30	0	0	20	0	0
100,000 or above	35	0	0	23	10	0
In IRELAND—						
In areas not urban, or urban with a population of less than 10,000	5	0	0	3	10	0
In urban areas with a population of 10,000 or above ...	7	10	0	4	0	0

And in respect of an off-licence, according to the following scale:—

Annual Value of Licensed Premises.			
Not exceeding £10	£1	10	0
Exceeding			
£10 and not exceeding £20	£2	0	0
£20 „ „ £30	£2	10	0
£30 „ „ £50	£3	0	0
£50 „ „ £75	£3	10	0
£75 „ „ £100	£4	0	0
£100 „ „ £250	£4	10	0
£250 „ „ £500	£7	0	0
£500	£10	0	0

Cards.—Makers of playing cards who sell, annually (September 1), £1. On every pack of playing cards made fit for sale, 3*d.*

NOTE.—*Bona fide* toy cards, not exceeding 1¾ in. in length and 1¼ in. in width, are exempted. The sale of cards by a maker without a licence is subject to a penalty of £20. Playing cards may only be sold in wrappers denoting the duty.

Chicory.—On every cwt., raw or kiln-dried, 12*s.*

NOTE.—There are stringent regulations with reference to the drying and roasting of chicory. On chicory and coffee substitutes, and mixtures of these with coffee or chicory, there is a duty of ½*d.* per ¼ lb.

Cider.—The scale of duties in respect of a retailer's on-licence is—

Where the annual value of the premises is			
Under £30	£2	5	0
£30 and under £50	£3	0	0
£50 „ £100	£4	10	0
£100 and over	£6	0	0

and the duty in respect of a retailer's off-licence is £2.

Coffee. See "Chicory".

NOTE.—Coffee must not be roasted with other substances so as to increase the weight, &c., under a penalty of £100. Packets containing mixtures of coffee or chicory substitutes with coffee must be labelled so as to make clear the nature of the mixture (penalty, £20).

Compensation (Licensed Premises) Fund.—Upon the renewal of an on-licence or the grant of a new licence, certain charges fall to be levied and paid with and as part of the excise licence duties. These charges are not to exceed the following scale:—

Annual Value of Premises.	Maximum Rate of Charge
Under £15	£1 0 0
£15 and under £20	£2 0 0
£20 „ £25	£3 0 0
£25 „ £30	£4 0 0
£30 „ £40	£6 0 0
£40 „ £50	£10 0 0
£50 „ £100	£15 0 0
£100 „ £200	£20 0 0
£200 „ £300	£30 0 0
£300 „ £400	£40 0 0
£400 „ £500	£50 0 0
£500 „ £600	£60 0 0
£600 „ £700	£70 0 0
£700 „ £800	£80 0 0
£800 „ £900	£90 0 0
£900 and over	£100 0 0

NOTE.—In the case of hotels, places of entertainment, refreshment rooms, and certain other premises the rate is one-third of the above charges.

Distillers.—Annually, according to the number of gallons distilled during the preceding year, namely, not exceeding 50,000 gal., £10; exceeding 50,000 gal., for the first 50,000 gal., £10, and for every further 25,000 gal., £10. The duty in the case of a rectifier or compounder of spirits is £15, 15*s.* And see "Spirits", "Stills and Retorts".

Glucose.—On solid, per cwt., 1*s.* 2*d.*; on liquid, per cwt., 10*d.* The manufacturer's annual licence is £1.

Hawkers.—Annually (March 31), £2.

NOTE.—The following persons are exempted: Persons selling or seeking orders for goods, wares, or merchandise to or from dealers who buy to sell again; the real makers of goods, &c., and members of their households selling or seeking orders for such goods, &c.; persons selling fish, fruit, victuals, or coal; and persons selling goods, &c., in public markets or fairs. A licence is granted on a first occasion on production of a certificate by a minister, or justice, or superintendent of police. The penalty for forgery of a certificate or licence is £50. A hawker must have his name and the words "licensed hawker" upon his vehicles, packages, handbills, &c. (penalty, £10 fine). Failure to produce his licence on proper demand renders a hawker liable to a fine of £10, over and above any other penalty to which he may be liable.

House Agents.—Annually (July 5), £2.

NOTE.—A house agent does not include one who negotiates the letting of any premises at an annual rent or value not exceeding £25. A land agent, solicitor, licensed auctioneer, or appraiser may act without licence, and a licensed house agent may act as an appraiser without further licence. Acting as a house agent without a licence renders the offender liable to a penalty of £20.

Invert Sugar, Manufacturers of, annually (June 30), £1. And see "Sugar".

NOTE.—Persons contravening the regulations are liable to a fine of £50.

Medicines.—Patent, where the price does not exceed 1*s.*, 1½*d.*; 2*s.* 6*d.*, 3*d.*; 4*s.*, 6*d.*; 10*s.*, 1*s.*; 20*s.*, 2*s.*; 30*s.*, 3*s.*; 50*s.*, 10*s.*; and exceeding 50*s.*, £1. The dealer's annual licence costs 5*s.*

NOTE.—The above duties on patent medicines are denoted by special stamps provided by the Commissioners of Inland Revenue and affixed to the bottles or packages containing the medicines. The penalty for selling without a stamp is £10, and for using stamps a second time and other offences, £20. Mineral waters, and ginger and peppermint lozenges and the like, are exempted.

Methylated Spirit. See "Spirits".

Molasses. See "Sugar".

Motor Spirit manufactured in or imported into the United Kingdom, per gallon, 3*d.* The manufacturer's annual licence costs £1, and the dealer's 5*s.*

NOTE.—A person may sell not exceeding one pint at one time to one person without a dealer's licence. A rebate of the motor-spirit duty is allowed where the spirit is employed on a motor car used solely for the conveyance of goods in the course of trade or husbandry, or on a hackney carriage, or on a car used by a medical man in the exercise of his profession.

Occasional Licences.—For the sale of any intoxicating liquor, per day, 10*s.*; for the sale of beer or wine only, 5*s.*; for the sale of tobacco, 4*d.* And see "Passenger Boats".

Passenger Boats.—For the sale of intoxicating liquor and tobacco, annually, £10; for one day only, £2.

Patent Medicines. See "Medicines".

Pawnbrokers.—Annually (July 31), £7, 10*s.*; or if dealing in plate, an additional £5, 15*s.* See "Plate".

NOTE.—A separate licence is required in respect of each shop. The penalty for trading without a licence is £50.

Pedlars.—Annual police certificate, 5*s.*

NOTE.—A pedlar is required to be seventeen years of age. The following persons need not take out a certificate: Sellers of victuals, commercial travellers, persons selling books under written authority of the publishers, persons selling goods, &c., in public market. The penalty for acting without a certificate is 10*s.* fine, and for refusal to produce the certificate, 5*s.* Other offences are: Making false representations with a view to obtaining a certificate (penalty, £2); lending, borrowing, &c., a certificate (penalty, £1); and refusing to allow pack to be opened (penalty, £1).

Plate.—Dealer's annual licence (July 5), £2, 6*s.*, in respect of gold above 2 dwt. and under 2 oz. in weight or silver above 5 dwt. and under 30 oz. in weight; and £5, 15*s.* in respect of gold and silver above these weights respectively. The annual licence for pawnbrokers and refiners is £5, 15*s.*

NOTE.—The penalty for trading without a licence is £50.

Playing Cards. See "Cards".

Publicans.—See "Beer", "Cider", "Spirits", "Sweets", "Wine".

NOTE.—Where premises are kept closed on Sundays, or one hour earlier than is required on weekdays, only six-sevenths of the appropriate duties are payable; and where premises are kept closed both on Sundays and also one hour earlier than is required on weekdays, only five-sevenths of the appropriate duties are payable. In the case of hotels and restaurants the duties are in the proportion which the receipts from the sale of intoxicating liquor bear to the total receipts, or, alternatively, 25 per cent of the annual licence value as certified by the Commissioners of Inland Revenue; and in the case of clubs there is no licence duty, and merely the excise duty of 6*d.* in the £ on purchases of intoxicating liquors.

Railways.—Passenger duty, 5 per cent, except in the case of certain traffic, in respect of which the duty is 2 per cent. Exemption is allowed in respect of single fares not exceeding 1*d.* a mile, and also in respect of return fares not exceeding that rate where the ordinary fare also does not exceed that rate. The charge does not apply to a light railway. The annual licence in respect of a railway restaurant car costs £1.

Refreshment Houses.—In respect of premises under the rent or annual value of £30, 10*s.* 6*d.*; above that sum, £1, 1*s.* And see "Occasional Licences".

Saccharin, per ounce, 7*d.* And see "Glucose", "Sugar". The manufacturer's annual licence costs £1.

Spirits.—Wholesale dealer's annual licence, £15, 15*s.*; retailer's annual on-licence, a duty equal to half the annual value of the licensed premises, subject to the same minimum duty according to population as specified under "Beer"; retailer's annual off-licence, according to the annual value of the premises, not exceeding £10, £10; exceeding £10 and not exceeding £20, £11, 10*s.*; £30, £14; £50, £15; £75, £16; £100, £17, 10*s.*; £250, £19; £500, £30; and exceeding £500, £50. Makers of methylated spirits pay £10, 10s., and retailers, 10*s.* And see "Distillers". For every proof gallon of home-made spirits the duty is 14*s.* 9*d.*; but methylated spirits are exempt from this duty.

NOTE.—A wholesale dealer's licence authorizes sale at any one time to one person of not less than two gallons. Methylated spirits must not be sold between 10 p.m. on Saturday and 8 a.m. on the following Monday (penalty, £100).

Stills and Retorts.—Annually (July 5), 10*s.*

NOTE.—Every person is liable to this duty, not being a licensed distiller, rectifier, or compounder of spirits, or vinegar maker, who keeps or uses any still or retort. The penalty for use without a licence is £50.

Sugar, which, when tested by the polariscope, indicates a polarization exceeding 98°, per cwt., 1*s.* 10*d.*; not exceeding 98° but exceeding 76°, per cwt., from 1*s.* 8·2*d.* down to 10·9*d.*; not exceeding 76°, per cwt., 10*d.* On molasses, containing 70 per cent of sweetening matter, the duty is, per cwt., 1*s.* 2*d.*: less than 70 per cent and more than 50 per cent, per cwt., 10*d.*; not more than 50 per cent, per cwt., 5*d.* And see "Glucose", "Saccharin".

Sweets.—Maker's annual licence, £5, 5*s.*; wholesale dealer's annual licence, £5, 5*s.*; retailer's annual on-licence, half the duty specified in the scale for wine retailers (see "Wine"); retailer's annual off-licence, £2.

Tobacco.—Grower's (England or Scotland) annual licence, 5*s.*; imported, unmanufactured containing 10 per cent of moisture, unstripped, 3*s.* 8*d.* per lb.; stripped, 3*s.* 8½*d.* per lb.; containing less than 10 per cent of moisture, unstripped, 4*s.* 1*d.* per lb.; stripped, 4*s.* 1½*d.* per lb.: manufactured, cigars, 7*s.* per lb.; cigarettes, 5*s.* 8*d.* per lb.; cavendish or negrohead, 5*s.* 4*d.* per lb.; same manufactured in bond, 4*s.* 8*d.* per lb.; other manufactured tobacco, 4*s.* 8*d.* per lb.; snuff with 13 per cent of moisture, 4*s.* 5*d.* per lb.; with less than 13 per cent of moisture, 5*s.* 4*d.* per lb.; grown in the United Kingdom, unmanufactured, containing 10 per cent of moisture, 3*s.* 6*d.* per lb.; containing less than 10 per cent of moisture,

3s. 11d. per lb.; manufactured, 4s. 8d. per lb. The duties on the annual (July 5) licences to manufacturers of tobacco or snuff are as follows: For not exceeding 20,000 lb., £5, 5s.; exceeding 20,000 lb. and not exceeding 40,000 lb., £10, 10s.; 60,000 lb., £15, 15s.; 80,000 lb., £21; 100,000 lb., £26, 5s.; exceeding 100,000 lb., £31, 10s. Beginners pay £5, 5s., and after next July 5 a further sum in proportion to the tobacco received within the preceding year. The dealer's annual (July 5) licence costs 5s. 3d.

Vinegar.—Maker's annual licence, £1.

Wine.—Wholesale dealer's annual licence, £10, 10s.; retailer's annual on-licence, according to the annual value of the licensed premises, namely, under £30, £4, 10s.; £50, £6; £100, £9; £100 and over, £12; retailer's annual off-licence, according to the annual value of the licensed premises, not exceeding £20, £2, 10s.; exceeding £20 but not £30, £3; £50, £3, 10s.; £75, £4; £100, £4, 10s.; £250, £5; £500, £7; exceeding £500, £10. And see "Publicans", "Sweets".

LOCAL TAXATION LICENCES

The following licences are administered by the County Councils. The necessary licences, however, may be obtained at the various post offices.

Armorial Bearings.—Annually (December 31), where used on a carriage, £2, 2s.; where used only on notepaper, &c., £1, 1s.

NOTE.—The penalty for use without a licence is £20.

Carriages.—Annually (December 31), carriages with four or more wheels, to be drawn by two or more horses, each, £2, 2s.; do., to be drawn by one horse only, each, £1, 1s.; with less than four wheels, each, 15s.; hackney carriages, each, 15s.

NOTE.—"Carriage" includes any carriage, not being a hackney carriage, drawn by horses or mules or by a horse or mule, but not a wagon, cart, or other vehicle used solely for the conveyance of goods or burden in the course of trade or husbandry, and whereon the name and address of the person keeping the same is painted in inch letters. "Hackney carriage" means a carriage plying for hire, including a carriage let by a coach-maker or coach hirer for a less period than three months. The penalty for keeping a carriage without a licence is £20. And see "Motor Cars".

Dogs.—Annually (December 31), 7s. 6d.

NOTE.—Dogs under six months of age and dogs kept solely for tending sheep or cattle or by blind persons are exempt. The penalty for keeping a dog without a licence is £5.

Game.—(1) For the killing of game, if taken out after July 31, and before November 1, to expire on July 31 of the following year, £3; to expire on October 31 of the same year, £2; if taken out on or after November 1, to expire on July 31 of the following year, £2; for a gamekeeper, £2; for a continuous period of fourteen days, £1. (2) For dealing in game, annually (July 1), £2.

NOTE.—"Game" includes hares, pheasants, partridges, grouse, heath or moor game, &c. The penalty for killing or dealing in game without the appropriate licence is £20.

Guns.—Annually (July 31), 10s.

NOTE.—"Gun" includes a pistol or an air gun. But a person who holds a game licence is exempt. And a licence is unnecessary for use merely in a dwelling-house or the curtilage thereof. The penalty for unauthorized use is £10.

Male Servants.—Annually (December 31), 15s.

NOTE.—"Male Servant" includes a gardener, park-keeper, gamekeeper, chauffeur, &c., but not a servant who is *bona fide* employed in some other capacity than that of a male servant and who only occasionally is employed as a male servant, nor a servant whose duties are *bona fide* limited to a portion only of each day and who does not reside in his employer's house. The penalty for keeping a male servant without a licence is £20.

Motor Cars.—Motor bicycle or motor tricycle, of whatever horse-power, £1; motor car, not exceeding 6½ h.p., £2, 2s.; exceeding 6½ but not exceeding 12 h.p., £3, 3s.; 16 h.p., £4, 4s.; 26 h.p., £6, 6s.; 33 h.p., £8, 8s.; 40 h.p., £10, 10s.; 60 h.p., £21; exceeding 60 h.p., £42; light locomotive which is a carriage or hackney carriage, of a weight unladen exceeding 2 tons but not exceeding 5 tons, £3, 18s.; exceeding 1 ton but not exceeding 2 tons, £2, 17s.; not exceeding 1 ton, or exceeding 5 tons, 15s. On registration of a motor car there is payable £1; and of a bicycle or tricycle, 5s. A motor driver's licence costs 5s.

NOTE.—Motor fire-engines and ambulances are exempt; and medical men using cars solely for professional purposes are entitled to an allowance of half the duty otherwise payable.

AUTHORITIES.—*Highmore's* "Stamp Laws"; *Highmore's* "Customs Laws"; *Highmore's* "Excise Laws"; *Highmore's* "Local Taxation Licences"; *Napier's* "New Land Taxes, 1910".

CHAPTER XXIX

THE COMMERCIAL LAWS OF THE BRITISH EMPIRE

Introductory—Canadian Dominion and Provincial Legislation—Commonwealth of Australia—Legislative Restriction of Combines—Characteristics of Dominion Legislation—Legislative Prohibition of Secret Commissions—Union of South Africa: Roman-Dutch Law—India—Crown Colonies—British Isles—Authorities.

INTRODUCTORY

For the purpose of obtaining a general survey of the laws of the British Empire it is desirable to classify its constituent parts under three main divisions. The Indian Empire, which in many respects holds a unique position, forms one; colonies obtained by the settlement of an unoccupied or barbarous country constitute another; and the third consists of those added by conquest or cession from other nations. The underlying legal principles in force in a colony may be determined according to its assignment by its history to one of these two latter classes.

Legal Systems in the Empire

In the early days of colonial expansion the Lords of the Privy Council declared "that if there be a new and uninhabited country found out by English subjects, as the law is the birthright of every subject, so, wherever they go, they carry their laws with them, and therefore such new-fourd country is to be governed by the laws of England". In the portions of the British Empire acquired by settlement, therefore, the fundamental principles and the prevailing usage correspond with the law of England, just as the English common law, as it is called, is the foundation of American law. In the territories obtained by conquest, on the other hand, the existing laws remain in force until they have been altered by legislation; and on several occasions it has been specifically agreed in the treaty of cession that the legal system in force should be respected and, so far as possible, maintained under British sovereignty. Thus it is that in various parts of the British Empire, for example the province of Quebec, there is still a considerable body of French law in force. The affairs of even a larger population, numbering probably more than ten million British subjects and inhabiting an area of over a million square miles in South Africa, British Guiana, and Ceylon, are directed by the principles of Roman-Dutch law; while in other parts may be found the influence of Spanish and Ottoman laws, besides the Hindu, Mohammedan, and Buddhist laws prevailing in different parts of the Empire of India. While the consequent distinctions tend to disappear in process of time, especially in connection with the laws affecting business relations, they cannot be left out of consideration in any comprehensive view of the laws in force throughout the Empire, and may at any moment become of practical importance. The extent to which the original law in force, whether English or foreign, in the colony upon its foundation still prevails depends in some measure upon the length of time during which the colony has exercised powers of self-government. In conjunction, therefore, with a classification founded upon a purely legal basis, it is necessary to take into consideration the difference in constitutional status. Again, the Empire of India forms a class by itself The remainder of the British Empire may be divided

into the federated self-governing Dominions, the self-governing colonies, and the Crown colonies.

Federations within the Empire

The Dominion of Canada, constituted by the British North America Act, 1867, includes the provinces formerly known as Upper and Lower Canada (now Ontario and Quebec respectively), New Brunswick, Nova Scotia, Prince Edward Island, British Columbia, Manitoba, Saskatchewan, Alberta, the North-West Territories, and the Yukon Territory. The Act forming the Commonwealth of Australia was passed in 1900. It consists of the States of New South Wales, Victoria, Queensland, South Australia, Tasmania, and Western Australia, and the Territory of Papua, and the Northern Territory. The Cape of Good Hope, Natal, Transvaal, and the Orange Free State became the original provinces of the Union of South Africa in accordance with the South Africa Act, 1909, creating the Union. New Zealand and Newfoundland are the principal Dominions not included in a federation. The differences of status between the constituent parts of the Empire are illustrated in the relationship with foreign countries through commercial treaties.

Treaty-making Power

The home Government retains complete control over any arrangement made with special relation to the Indian Empire, as, for example, the treaty with China respecting the importation of opium. A right of accession to or withdrawal from treaties is reserved to the Crown colonies, and is exercised with the approval of the Colonial Office. Legally the Crown has full power to make any treaty binding on any part of the Empire, but in practice the self-governing Dominions have a wide liberty, which has been granted mainly owing to the growth of their commercial interests. Before 1875 the great majority of treaties included the Colonies as a matter of course. The treaties with Austria-Hungary, Norway, Portugal, and Sweden made before that date are expressed so as to comprise all parts of the Empire. The first step towards a modification of this procedure was to include a clause that a treaty should not apply to the self-governing Colonies which did not notify their adhesion within a stated period. In 1899 was made a further modification. The Convention with Uruguay made in that year enabled a colony to withdraw by giving six months' notice, and clauses to the same effect were added to earlier treaties. For example, the Commonwealth of Australia has withdrawn from the Liberian Treaty of Commerce of 1848, the Cape of Good Hope withdrew from the Commercial Treaty with Paraguay of 1884, and the Australian States from the Commercial Treaty made with Greece in 1886. At the same time it has been stipulated that the colony which does not enter the treaty will retain the most-favoured-nation treatment if it is granted to the foreign power which is the other party to the treaty. Technically this power of withdrawal or accession rests entirely with the Imperial Government, and it is not, of course, included in treaties involving points in the foreign policy of the Empire, such, for example, as arbitration treaties. Without passing into this sphere, however, the treaties may cover a wide scope. They can include every matter relating to commerce and shipping, immigration and the right to hold land. By later developments even the power of negotiating treaties has been exercised by the Ministers of the self-governing Dominions in consultation with the British representative. The Commercial Convention in 1908, for example, between Canada and France was primarily the work of the Canadian Minister, who also made other arrangements with Japan instead of agreeing to the Commercial Treaty concluded with the United Kingdom in 1911. These treaties, in pursuance of a fiscal policy distinct from and in some respects antagonistic to the policy of Great Britain, have raised an important issue in respect to the operation of the most-favoured-nation clause. If Canada makes special terms with another country, for example the United States, the Dominion is obliged by that clause to grant the same treatment to twelve other countries. The Dominion desired to have complete independence in carrying out its commercial policy. At the Imperial Conference of 1911 a resolution was passed requesting His Majesty's Government "to open negotiations with the several foreign Governments having commercial treaties which apply to the oversea dominions, with a view to securing liberty for any of the dominions which may so desire to withdraw from the operation of the treaty without impairing the treaty in respect to the rest of the Empire". Negotations have been begun, and Sweden and Mexico have assented in the form of a Declaration that the British Colonies which wish to do so may withdraw after one year from the existing treaties of commerce.

Enforcement of Arbitration Awards

Another important point to which some attention was given at the Imperial Conference, 1911, was the variation in the laws and practice of the different parts of the Empire in enforcing arbitration awards arising out of commercial contracts.

The details are set forth at length, and occupy several pages of a Blue Book (Cd. 5746—I), prepared for the information of the Conference, but may be summarized briefly. The first point is whether an agreement in writing to refer to arbitration in the United Kingdom would be valid and enforceable in another part of the Empire. Generally speaking, the law is the same as the English Arbitration Act, 1889, and it would seem that in many instances the point has never arisen for determination. The second question was whether an award in an arbitration held in the United Kingdom could be enforced (1) if the award were given in the United Kingdom, or (2) delivered in the place of domicile of each of the parties. Again, it would appear that provision has not been made upon these points by legislation, nor have the Courts had to consider them. (See also Chapter XXV of this Part.)

Patent Law and Trade Marks

Another subject dealt with very fully for the information of the Imperial Conference was the variation in the laws relating to patents and trade marks with a view to their assimilation. The memorandum is available in the Blue Book abovementioned, and the information contained therein cannot be summarized with justice to its contents. (See also Chapter XIV of this Part.)

CANADIAN DOMINION AND PROVINCIAL LEGISLATION

In the three federations within the British Empire—the Dominion of Canada, the Commonwealth of Australia, and the Union of South Africa—there are, in regard to commercial matters, distinctions between the methods of treatment by the legislatures of the federations and their constituent parts, and difficulties in regard to their respective limitations. The Parliament of the Dominion of Canada has exclusive power to deal with all matters coming within the following classes of mercantile subjects: The regulation of trade and commerce, navigation and shipping; banking, incorporation of banks, and the issue of paper money; weights and measures; bills of exchange and promissory notes; interest; legal tender; bankruptcy and insolvency; patents of invention and discovery, and copyright. The provincial legislatures in the same connection are concerned only with the issue of licences, such as commercial travellers' licences, for revenue purposes, and the incorporation of companies with objects limited to the area of the province. The differences between the Dominion and provincial legislatures have centred mainly upon the precise extent of the power of the Dominion to regulate trade and commerce, so that the clause conveying it has been subjected on several occasions to judicial interpretation. It has been well pointed out that one of the main objects of Union is to draw together the separate units that so far as possible their commercial intercourse with each other should be analogous; "that the merchant or manufacturer in Ontario should find in Nova Scotia or New Brunswick the same principles of commercial law as were in operation in his own province; and transact his business, buy and sell and trade upon the same principles with an inhabitant of Pictou or St. Stephen as with a citizen of Toronto or London". Union has had the desired effect. Even in Quebec commercial law is to a very large extent English in its main provisions.

Canadian Company Law

The concurrent jurisdiction of the Dominion and the Provinces in regard to the incorporation of companies has led to some difficulties. The Dominion law on the subject is founded on an entirely different system to that which governs the law of companies in the mother country. Some Provinces follow the one and some the other, while there are many laws which are founded partly on the one and partly on the other system. Details of the variations which are too lengthy for reproduction are set out in full in a Blue Book (Cd. 5746—I), prepared for the information of the Imperial Conference, 1911. Though the incorporation of companies is dealt with both by the laws of the Dominion and of the several Provinces, the insolvency of companies is a matter exclusively within the jurisdiction of the Dominion Parliament. It is only under the Dominion Winding-up Act that a creditor can obtain a winding-up order *ex debito justitiae*, and though each of the Provinces has its separate winding-up Act, the provisions of these Acts relate only to the voluntary winding-up of a company and do not infringe on the exclusive legislative power conferred on the Dominion Parliament with regard to compulsory liquidation. (See also Chapter IV of this Part.)

Dominion Control of Trade and Commerce

The phrase "regulation of trade and commerce" has not been expressly defined either by

the Privy Council or the Canadian Courts; but its general effect may be given in the words of Mr. Justice Tessier, who said that "it was intended to express legislation over the general interests of commerce which relate to the whole Dominion of Canada, the mode of importing and exporting merchandise, the storing of this merchandise in towns so as to protect the customs, entire prohibition in certain cases for the general protection of the commerce of the Dominion, but not special laws of provincial legislatures which do nothing more than regulate the mode of selling and trading in certain matters of a merely local nature in the province". To the Department of Trade and Commerce with a Minister at its head is entrusted "such matters connected with trade and commerce generally as are not by law assigned to any other Department of the Government of Canada". Certain Acts are specifically assigned to be administered by the Department of Trade and Commerce. The first is the Cullers Act, which applies only to the provinces of Ontario and Quebec, and no place below the eastern end of the island of Orleans. The Act requires that "all square and waney timber shipped for exportation by sea shall be either measured or culled at the option of the persons interested, by a licensed culler, under the control and superintendence of the supervisor or deputy". It sets forth the duties of the supervisor and his deputies, the qualifications and methods of examination of the cullers, the mode of culling and measuring, the qualities of the lumber, and the details for the administration of the Act, with the penalties for its infringement. Certain portions of the Inspection and Sale Act which relate to certain staple commodities are also specifically assigned to the administration of the Department. They include the extensive arrangements for maintaining the standards of Canadian grain as specified in the Act, and similar provisions to secure the good qualities of beef and pork, leather and raw hides, pot ashes and pearl ashes, and fish and fish oils, besides the inspection of flour and meal imported into Canada. The third Act relates especially to the grain in the inspection district of Manitoba, consisting of the provinces of Manitoba, British Columbia, Saskatchewan, and Alberta, the North-West Territories, and that portion of the province of Ontario lying west of and including the district of Port Arthur.

Canadian Banking Law

The extent to which uniformity both among the provinces and with British law has been maintained may be illustrated by the banking law. The well-known treatise, *Grant on Banking*, has required only slight annotation in its latest edition to show the points which need additional elucidation for Canadian use. The Federal Bank Act deals mainly with questions incidental to the incorporation of banks and the issue of bank notes. The Bank of British North America is to some extent exempt from the general law, but all other banks must be incorporated in accordance with the provisions of the Act. Anybody assuming the name "bank" or similar title without the authorization of the Act is liable to a severe punishment. The Act of incorporation must set forth the amount of capital stock, the place where the cheif office of the branch is to be situated, and the names of the provisional directors. The capital stock must not be less than five hundred thousand dollars, divided into shares of one hundred dollars each. The provisional directors only hold office until directors are elected by the shareholders in the mannre prescribed by the Act. So soon as the minimum capital stock has been subscribed, and not less than half the amount actually paid to the Minister of Finance, a meeting of subscribers may be called for the election of directors and other business; but the business of the bank shall not commence until a certificate has been issued by the Treasury Board, and upon its issue the Minister of Finance returns the amount deposited with him except five thousand dollars for securing notes issued by the bank. When the paid-up capital is one million dollars or less, each director must hold paid-up stock to the amount of not less than ten thousand dollars, and possess proportionately larger interest in a greater capital A majority of the directors must be British subjects. Banking practice in Britain and Canada differs only in detail. The relationship between banker and customer in Britain is simply that of debtor and creditor, and the statute of limitations is operative in Britain as against any other simple contract debt. (See Part IV, Chapter III.) But in Canada the liability of the bank under any law, custom, or agreement to repay moneys deposited with it and interest, if any, and to pay dividends declared and payable on its capital stock, continues, notwithstanding any statute of limitations, or any enactment or law relating to prescription. The practice of marking cheques, which is not common in Britain, is general in Canada. The drawer or holder of a cheque presents it to the bank upon which it is drawn, and the bank certifies by some official mark that the drawer has sufficient balance to pay the cheque, which may then be cashed or endorsed to someone else. Every holder of the cheque thereafter has an additional security from the banker's certificate.

Banking Business

Canadian banks have extensive powers of business under the authority of the Bank Act. They may discount, lend money, make advances, take collateral securities, deal in gold and silver coin, bullion, bills of exchange, promissory notes and other negotiable securities, or the stocks, bonds, debentures, and obligations of municipal and other corporations whether secured by mortgage or otherwise, or Dominion, provincial, British, foreign, and other public securities. In respect to bills of exchange the Canadian law is almost verbatim the same as the British, but there is a difference between the two upon the point of the payment of cheques bearing a forged endorsement. The British Bills of Exchange Act protects the banker, but the Canadian Act does not contain a similar provision, so that a Canadian banker who pays a cheque drawn on the bank and payable to order is bound to see that the endorsement is regular. If the endorsement is a forgery, the bank is liable to the drawer of the cheque. By the Canadian practice there is not the same need to cross a cheque, nevertheless the British law as to crossed cheques is incorporated in the Canadian.

(Generally as to Bills of Exchange and Banking see Chap. VII of this Part, and Part IV, Chap. III.)

Canadian Law of Carriers

In the wide range of subjects which are allied with the law of bailments there is the same correspondence between British and Canadian law Details of practice even may not affect the law. For example, the system of checking which prevails on Canadian railways has received judicial consideration. A passenger travelling on a railway took his travelling bag into the carriage with him. No one asked him to have it checked, nor did he give it into the charge of an official of the railway company for that or any other purpose. In due course the train stopped at a station for the passengers to be permitted to take refreshment. The passenger left his bag in the carriage in order to retain his seat. When he returned it was gone. The Court considered that the system of checking was merely an additional precaution adopted by the railway company for their own security, and did not affect their liability. "If the law is the same in both countries," said Chief-Justice Draper, "and makes the company liable for passengers' luggage, as I take it to do, then I do not see how the responsibility can be altered by any difference in the system which they may choose to adopt for the care and management of it." (See also Part V.)

COMMONWEALTH OF AUSTRALIA

The power of the Federal Parliament in the Commonwealth of Australia is more restricted than that of the Dominion of Canada. Instead of the constitution having conferred a general power in regard to trade and commerce, it restricts the Federal Parliament to legislation in respect to "trade and commerce with other countries, and among the States". It also has power to deal with the following matters connected with commercial interest: Currency, coinage, and legal tender; banking other than State banking; also State banking extending beyond the limits of the State concerned; the incorporation of banks and the issue of paper money; insurance other than State insurance; also State insurance extending beyond the limits of the State concerned; weights and measures; bills of exchange and promissory notes; bankruptcy and insolvency; copyright; patents of inventions and designs and trade marks; foreign corporations and trading or financial corporations formed within the limits of the Commonwealth. Labour questions have occupied much of the time of the Commonwealth Parliament, but they tend to affect commercial matters, as in the series of Acts passed for the preservation of Australian industries. Another illustration of the same tendency is the New South Wales Act constituting a tribunal to fix a minimum wage for persons engaged in clerical work, similar to the Wages Boards regulating other industries. However, the Commonwealth Parliament has passed two useful measures making uniform the law on their respective subjects throughout its extent. The Commonwealth Patents Acts follow in principle the British Act, except that in place of revoking a patent if found to be inadequately worked in Australia, the Act provides that the patent may be worked and that such working is not an infringement of the patent. A Commonwealth Bills of Exchange Act has also received the royal assent. It differs from the British Act of 1882 in the following subsection, which is inserted in the section corresponding with Section 92:—

"When the day on which any payment, presentment, notice, noting, protest, acceptance, act or thing should be made, given or done in connection with a bill, cheque or note falls on a non-business day, it may be made, given or done on the next business day next following". And in

the section corresponding with Section 14 of the British Act it is declared that "when the last day of grace falls on a non-business day, the bill is due and payable on the succeeding business day".

Prohibition of False Marking of Goods

In 1905 the Commonwealth passed an Act relating to commerce with other countries, in order to prevent the use of false trade descriptions upon certain goods or upon packages containing the same, either imports or exports of the Commonwealth. The goods coming within the purview of the Act are articles used for food or drink by man, or used in the manufacture or preparation of articles for food or drink; medicines or medicinal preparations for internal or external use; manures; apparel (including boots and shoes), and the materials from which such apparel is manufactured; jewellery, and seeds and plants. Trade description is defined to include anything relating to the nature, number, quantity, quality, purity, class, grade, measure, gauge, size, or weight of the goods; or as to the country or place in or at which the goods were made or produced; or as to the method of manufacture or the persons by whom the goods were produced; or as to the material of which they are comprised, or any mark which according to the custom of the trade indicates any such matters. Infringement of the Act involves penalties, and inspectors are appointed to secure its enforcement. (See also Chapter XIV of this Part.)

State Legislation

The legislatures of the States continue to make whatever provision is necessary in other matters. Commercial legislation, however, has followed the lines of British law. The State Acts relating to partnership, sale of goods, factors, and bills of lading are almost exact copies of the British Acts, though New South Wales has not adopted in its consolidated form the Sale of Goods Act, and Tasmania has a special enactment to punish the signing of untrue bills of lading. New South Wales, following the example of New Zealand, has a separate Act for the protection of the purchasers of certain books. It applies to every contract for the sale of printed matter, either in books or any other form, which is not delivered to the purchaser in a complete form at the date of the contract. The Act declares the contract to be void unless (*a*) the purchaser has signed an agreement on a form on which there has been printed in red, of size not less than greatprimer, the words "the total liability of the purchaser under this agreement is", followed by the amount of such liability printed in red in words and figures of the like size, and having the letters of such words printed in capitals; and (*b*) unless such form has been printed or written in black letters across and subsequent to the printing of such red letters and figures. The vendor of the books at the time of the signing of the contract must hand to the purchaser a duplicate of the agreement, having printed on it the words "duplicate to be kept by purchaser", and the vendor is not entitled to recover under the contract unless he can produce an acknowledgment by the purchaser of the receipt of such duplicate.

Company Law

In company law there are some differences among the States and also from the mother country, though there is also considerable uniformity. One of the special features of the Australian legislation is the system of "no liability" companies which has been found useful for mining companies in Canada. For the protection of creditors a "no liability" company is bound to use the words "no liability" as the last two words of its name, and no goods may be ordered on behalf of a company of this class except on paper bearing the company's name including the words "no liability". In Victoria, it may be noted, special care has been taken to safeguard the interests of the ignorant investor by forbidding the use of the words "savings", "savings bank", or "savings institution" as part of the title of a company. The advertising of the amount of nominal capital with the prefix of the word "nominal" is also forbidden. In South Australia no call can be made in a winding-up for the benefit of vendors' shares in order to place vendors' shares on an equality with shares which have been paid for in cash. A feature of the Queensland company laws is the distinction drawn between companies formed in other parts of the British Empire and foreign companies. British companies in Queensland, when registered, have the same rights and privileges in the State, including the right to hold land, as Queensland companies. Foreign companies, on the other hand, can only hold land in the colony if they hold the licence to that effect of the governor in council. A similar provision in regard to the holding of land is incorporated in Tasmanian law. (See also Chapter IV of this Part.)

Commercial Law in Australia

The Australian legislation relating to bankruptcy does not follow quite so closely the English law

as in the case of sale of goods and partnership, but in the main the various legislatures have followed the English Acts of 1869 and 1883. In dealing with commercial law the Courts both in Australia and Canada have been ready to adopt the English decisions upon disputed points, and the Privy Council as the final Court of Appeal for the overseas dominions has assisted as an unifying influence.

LEGISLATIVE RESTRICTION OF COMBINES

The practical effect of the difference between the constitutions of the Dominion of Canada and the Commonwealth of Australia, as regards the regulation of trade and commerce, is illustrated in the enactments which have been found necessary to combat "combines". Both countries are menaced by the operations of the great American combinations. The Commonwealth Parliament has passed three Acts "for the preservation of Australian industries and for the repression of destructive monopolies". The first, assented to in 1906, was primarily directed against Rockefeller's International Harvester Trust. The effect of the Acts is that any person who, either as principal or agent, enters into any combination "with intent to restrain trade or commerce to the detriment of the public, or with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers, is guilty of an offence" punishable with a fine amounting to £500. The Act is based upon the American statute passed in 1890 known as the Sherman Anti-Trust Act, which provides that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal". By the Australian Act the fact that the defendant is a commercial trust is sufficient evidence of unfair competition unless evidence is furnished to the contrary. If the competition results in inadequate remuneration for labour, or throws workers out of employment, it is deemed to be unfair. Punishment is by means of fines, and a perpetual injunction may be granted to restrain the repetition of the offence. Any person injured by anything done in contravention of the Act may recover treble damages as by the Sherman Anti-Trust Act. Another part of the Australian Act—for obvious reasons not contained in the American Act—is to prevent "dumping", which is not defined, and enables the Comptroller of Customs to take proceedings against any person who is believed to be importing into Australia goods with intent to destroy or injure any Australian industry by their sale or disposal within the Commonwealth in unfair competition with Australian goods. The facts are then laid before a judge of the High Court, whose decision may have the effect of placing the articles among the goods prohibited from importation under the clauses of the Customs Act.

But the law has not been adequate for its purpose, and it is considered that it cannot be made so until the Commonwealth Parliament has the fuller authority in the matter possessed by the Canadian legislature.

Canadian Combines Act

"An Act for the Investigation of Combines, Monopolies, Trusts, and Mergers" was passed by the Parliament of Canada in 1910. It recognizes that the most powerful weapon with which to contend against these huge financial manipulations is the force of public opinion. The Act gives a comprehensive definition of the word "combine" as follows:—

"Combine means any contract, agreement, arrangement or combination which has, or is designed to have, the effect of increasing or fixing the price or rental of any article of trade or commerce, or the cost of storage or transportation thereof, or of the restricting competition in, or of controlling the production, manufacture, transportation, storage, sale or supply thereof, to the detriment of consumers or producers of such article of trade or commerce, and includes the acquisition, leasing, or otherwise taking over, or obtaining by any person to the end aforesaid, of any control over or interest in the business, or any portion of the business, of any person, and also includes what is known as a trust, monopoly, or merger".

Where six or more persons, British subjects, resident in Canada, of full age, are of opinion that a combine exists so that prices have been increased to the detriment either of consumers or producers, they may make an application to a judge for an order directing an investigation into the alleged combine. The application to the judge must state its nature and the manner of its operation. It must be accompanied by a declaration from each applicant that the combine does in fact operate to his detriment as a consumer or producer. Within thirty days the judge is to fix a time for the hearing of the application, when the applicants may

be represented by counsel. The judge may make an order for the investigation of the affairs of the combine, or, if the evidence seems to be insufficient to justify that course, he may adjourn the proceedings in order to give the applicants opportunity to obtain further information in support of their case. Upon the judge issuing an order directing an investigation to be made, the Minister of the Interior is to appoint a Board of Investigation consisting of three members—one to be appointed on the recommendation of the persons making the application, another by the persons concerned in the alleged combine, and the third on the recommendation of the persons so chosen. If either side fails to appoint, the Minister is authorized to fill the vacancy. The intention is that the third member, who is to be the chairman, shall be a judge. The members, who are paid, are required to take an oath of office to secure that they have no personal interest in the proceedings. The Board is to have the status of a Court of Record, with power to hear parties by counsel, summon witnesses, employ experts, and punish for contempt. No proceedings under the Act are to be deemed invalid by reason of any defect of form or any technical irregularity. The Board shall "expeditiously, fully and carefully" enquire into the matters referring to it and anything that may affect it, and report in writing. The force of public opinion is enlisted by the provision that a copy of the report "shall be sent free of charge to the parties and to the representative of any newspaper in Canada who applies therefor; and the report and minority report, if any, shall also be published without delay in the *Canada Gazette*. The Minister may distribute copies of the report, and of any minority report, in such manner as seems to him most desirable, as a means of securing a compliance with the Board's recommendations." The Act allows the admission free of duty of any article manipulated by the combine, and authorizes the revocation of any patent of which the holder has been infringing its provisions. It also authorizes the Board to impose a penalty of one thousand dollars per day and costs during the continuance of the combine after the publication of the report. The Act sets up a complicated machinery, which, like the American legislation, affords opportunity for obstructionist litigation. (See also Part I, Chapter X.)

New Zealand Anti-Trust Act

The Dominion of New Zealand, the most important of the self-governing dominions not included within a federation, has also been obliged to legislate on the subject, but the statute differs in one important respect from the Canadian and Australian enactments. It applies only to certain specified articles, and is obviously directed against certain American trusts. The articles are agricultural implements; coal; meat; fish; flour; oatmeal and the other products or by-products of the milling of wheat or oats; petroleum or other mineral oil (including kerosene, naphtha, and the other products or by-products of any such oil); sugar; and tobacco (including cigars and cigarettes). The method of repression of a monopoly in any of these articles is by direct prohibition enforced by heavy penalties. It is an offence in any way to offer or give any kind of valuable consideration in order to secure exclusive dealing with any particular person, or to act in co-operation with any commercial trust. Similarly, any person who refuses to supply, either absolutely or only upon disadvantageous terms, to another person because he has not taken part in the attempt to create a monopoly, is guilty of an offence under the Act. The sale of goods at a price in any manner directly or indirectly determined by a trust is an offence; and "if any commercial trust, whether as principal or agent, sells or supplies, or offers for sale or supply any goods at a price which is unreasonably high, every person who is then a member of that trust" is likewise guilty of an offence. For the purposes of the Act, "the price of any goods shall be deemed to be unreasonably high if it produces, or is calculated to produce, more than a fair and reasonable rate of commercial profit to the person selling or supplying, or offering to sell or supply those goods, or to his principal, or to any commercial trust of which that person or his principal is a member, or to any member of any such commercial trust". The penalty for an offence against the Act is £500, and if two or more persons are responsible for the same offence each is severally liable, The penalty is recoverable by an action in the Supreme Court, which has power to remit any part, and may in addition grant an injunction. In such an action the Supreme Court may admit evidence as it thinks fit, "whether such evidence is legally admissible in other proceedings or not". No person, whether party or not to any such action, shall be excused from answering any question or producing any evidence on the ground that he may incriminate himself in respect of an offence against the Act.

South Africa and Combinations

The Union of South Africa has not yet had occasion to deal with the subject of combination in the same form, but before the Union Cape Colony found it necessary to take action in regard to the price of meat. The preamble of

the Act states that "within recent years certain persons have formed combinations for regulating the meat trade in order to secure larger profits", and that "the effect of such combinations is prejudicial to the public interest". Therefore "every act, contract, combination or conspiracy in unreasonable restraint of the trade of a butcher" is declared to be illegal, with a proviso safeguarding *bona-fide* partnerships, and "any *bona-fide* arrangement with any other person or persons carrying on the same trade, with the object of effecting economies in the said trade or carrying on business more economically". The Act, unlike the Sherman and Australian Acts, only authorizes imprisonment, with or without hard labour, for a period not exceeding twelve months in default of payment of the penalty of £500. "All contracts and undertakings in support of any combination the object of which is to secure the control of the sale of meat, so as to enable such combination to arbitrarily control or regulate the price thereof, shall be held to be illegal and void." Intimidation to sell at special prices is also punishable under the Act. The problem, as it presents itself for treatment by the South African legislature, relates to the combination of shipowners, which, it is contended, has controlled the shipping trade, with the result that the seaborne trade has been handicapped by high freight rates, and traders have been restricted by a system of deferred rebates. Legislation has been passed to prevent the South African Government from entering into any contract whatever, either for mails or freights, with any member of a shipping conference or with lines granting deferred rebates. (See also Part I, Chapter X.)

CHARACTERISTICS OF DOMINION LEGISLATION

There are two features in which the legislation of the self-governing Dominions differs oftentimes from the Acts passed by the Parliament at Westminster. It deals with a wider range of subjects, and so affects matters which in the United Kingdom are not yet considered to be within the province of State intervention. The other difference is in the form of the enactments themselves. Details are embodied in them to an extent rarely found in the Acts of Parliament of the United Kingdom, which are so often, are mere skeletons to be clothed with administrative regulations made by a Government department. The draftsman seems determined sometimes to provide for every possible circumstance or combination of circumstances that may arise in the administration of the Act. Therein, perhaps, may be found one of the chief characteristics of the legislation of the younger communities. They show a remarkable faith in the power of legislation to foresee what is best, to discipline men, and to inculcate the practice of humane and moral principles.

Registration of Firms

One example of the statutory treatment of a subject which has not yet received attention in this country is the registration of firms. The Acts on the subject are supplementary to the legislation in respect to companies and limited partnerships, which corresponds to British law. In Ontario, every person who is engaged in business for trading, manufacturing, or mining purposes, and who is not associated in partnership with anyone, but who uses as his business style some name or designation other than his own, or who in such style uses his own name with the addition of "and company", or some other word or phrase indicating a plurality of members in the firm, must make a declaration to the Registrar of the division in which he intends to carry on business. The declaration must contain the name, surname, addition and residence of the person, and the name, style, or firm under which he intends to carry on business, and must be filed within six months of the time when he first uses the style. The Registrar is required to keep a record of all the declarations in a form available for ready reference, which is open to the public gratuitously, or searches will be made by the Registrar upon payment of a small fee. The chief point in which the laws of the other Canadian provinces differ on the subject is the length of time allowed for registration. In Quebec it is sixty days, and in British Columbia and Nova Scotia three months. For the further protection of the public, the Nova Scotian Act requires that in all cases in which a firm name or style is used, the name or names of the persons composing the firm shall be distinctly written or printed on all the bill-heads and letter-heads. In Alberta and the North-West Territories the period allowed is six months. In all cases, of course, failure to register involves the imposition of penalties. The registration of persons trading alone under a firm name has not been adopted yet in Manitoba, New Brunswick, and Prince Edward Island. Similar legislation is in force in the Australian States. In New South Wales, Queensland, Tasmania, Victoria, and Western Australia the firm requiring to be registered must complete the formalities

before commencing business, and any reconstituted firm must re-register within one month of the change. In South Australia the registration must be renewed quinquennially. Within the Union of South Africa, legislation of a similar character is in force in Natal and the Transvaal. The Act passed in the latter province requires that notice of changes in the style, constitution, or place of business shall be given within fourteen days after the change takes effect. It must be advertised on behalf of the business in three consecutive ordinary issues of the Government Gazette, and once in each week for three consecutive weeks in a newspaper circulating in every district wherein the business premises were situate before the change. Similar notice must be given of the transfer of a business. The Act also places restrictions upon the names which may be used by a business. It must not be identical with that by which a business in existence is already registered, nor so nearly resembling that name as to be calculated to deceive, except when the business in existence is in the course of being dissolved in the prescribed manner. "A business may not be registered by a name calculated to cause annoyance or offence to any person, or by a name suggestive of blasphemy or indecency." The Act also contains a provision commonly found in the legislation of the Dominions, even where registration is not required, that consent from authority must be obtained before a business can use a name which includes the words "Imperial", "Royal", "Crown", "Empire", "Government", or any other word which imports or suggests that it enjoys such patronage. If by inadvertence a business is registered in conflict with the provisions of the Act, its right to trade is suspended until a change has been made in the name. Registration of firms is also obligatory apparently upon all firms in the Gold Coast Colony, although the ordinance requiring it was passed "to provide more effectual means for preventing and dealing with frauds upon insurers in England and elsewhere". (See also Chapter III of this Part.)

Registration of Accountants

Another direction in which the legislatures of the dominions are setting an example, as it seems to some, to the Parliament of the United Kingdom, is in the State recognition of the professions, such as accountants, architects, and surveyors To some extent the difference of legal status is one rather of form in the method of legislating, though the result affects the position of the profession in public estimation. In Britain the organization of accountants is by the authority of a royal charter. The legislation of the Dominions illustrates in its form the development of State regulation. In the Transvaal a private ordinance provides for the registration of accountants, and advances a stage beyond the powers of a chartered corporation by restricting the description "Accountant" or "Public Accountant" to those who have been registered in accordance with its requirements. The Transvaal Society of Accountants is incorporated, by the authority of the ordinance, to supervise the compilation of the Register. Members of the Society of Accountants in Edinburgh, Institute of Accountants and Actuaries in Glasgow, Society of Accountants in Aberdeen, Institute of Chartered Accountants in England and Wales, Institute of Chartered Accountants in Ireland, and Society of Accountants and Auditors in England are entitled to be registered, and such other persons as comply with the requirements of the Council of the Society. Statutory power is granted to the Society to deal with offences, and the procedure is similar to that by which a solicitor is struck off the rolls in England. In Ontario there is similar legislation in support of the Institute of Chartered Accountants, but with the important difference that the Act does not affect the right of any person not a member of the Institute to practise as an accountant in the province of Ontario. There is a substantial penalty for the use by a non-member of the designation "Chartered Accountant" or the initials "F.C.A.", "A.C.A.", or "C.A.". Saskatchewan and Newfoundland have passed similar Acts of Parliament, and Natal has adopted the Transvaal Act, with the addition to the members of societies mentioned as being entitled to registration, of any member of any Society of Accountants in a South African or other British colony, approved by the Council, which grants in exchange reciprocal privileges to the Natal Society. In 1908 the New Zealand Society of Accountants was incorporated by an Act of the General Assembly, and possesses similar powers to other societies. The letters "P.A." or "R.A.", signifying public accountant or registered accountant, are used to signify the authorized practitioners. (See also Part I, Chapter XIII.)

LEGISLATIVE PROHIBITION OF SECRET COMMISSIONS

It has sometimes happened that the Dominion legislatures, instead of leading the way, have followed the Parliament at Westminster, while on other occasions the idea may have been suggested in Britain and taken up more quickly in the Dominions, where, by the way, hasty legislation not infrequently requires numerous amendments. The Act known as the Prevention of Corruption Act, 1906, is a useful and interesting example of the latter course, since the subject was considered for some time before the Parliament at Westminster took action. The Dominions, in adopting the main proposals, effected some improvements, as in providing the statutes with a simpler title denoting distinctly the matter with which it is concerned, either "Secret Commissions" or "Illicit Commissions". The Australian Commonwealth Act on the subject was passed into law a year before the British Act, and is considerably more stringent in its provisions. "Consideration" is defined to mean "valuable consideration of any kind, and particularly includes discounts, commissions and rebates, bonuses, deductions and percentages, and also employment or an agreement to give employment in any capacity." The penalties are in the case of a corporation £1000, and of any other person two years' imprisonment or £500, or both. Where any gift or consideration has been given in contravention of the Act by any person to an agent, the principal may recover the amount or the money value of the consideration by legal procedure either from the agent or from the person who gave the gift or consideration to the agent. Aiding and abetting any offence under the Act is punishable as severely as the offence itself. The Australian States have also legislated on the subject, and in some cases even extended the provisions of the Commonwealth Act. South Australia, Tasmania, and Western Australia, in particular, have added several sections. The Acts include in the offence any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employees, or at any agent's request to any person. The same States have also made it an offence punishable under the Act for one person to give advice to another so as to influence the person advised (*a*) to enter into a contract with a third person, or (*b*) to appoint a third person as trustee when that third person has offered a valuable consideration to the person giving the advice. Another section in each of the three acts makes it an offence for a valuable consideration to be offered or given to a trustee, or for a trustee to solicit or accept any valuable consideration without the assent of the persons beneficially entitled to the estate or of a judge of the Supreme Court. Finally, the Acts place the burden of proof on the accused. New Zealand did not legislate on the subject until 1910, and then naturally followed these examples of more advanced legislation except in one important particular The Act contains a proviso that it does not "prohibit or render illegal any recognized practice or usage of any trade or calling existing at the time of the passing of the Act, if the Court before which the matter of such practice or usage is in question is satisfied that it is honest and reasonable". (See also Chapter II of this Part.)

UNION OF SOUTH AFRICA: ROMAN-DUTCH LAW

It is noticeable that the bulk of legislation of the South African provinces is small compared with the Canadian output, and the contrast is even more marked by the side of the voluminous enactments of the Australian States. The power of the Federal Parliament of the Union of South Africa, as expressed in the constitution, is without limitation: "Parliament shall have full power to make laws for the peace, order, and good government of the Union". The subjects which are specially assigned to the provincial councils, though the Federal legislature retains its concurrent power, do not affect directly commercial interests. The common law of South Africa, however, requires some attention, as some remains of the old Roman-Dutch law still create distinctions from British law.

Contracts

A characteristic feature of the English law of contract is what is known as the doctrine of consideration (see Chapter I of this Part). But in Roman-Dutch law a consideration in the English sense of the word is not, according to some authorities, an essential of a contract. It is sufficient that there be some reasonable cause. It does not matter whether the motive be one of benevolence or friendship, or whether it is a commercial transaction, but the motive must exist so that the agreement is a deliberate act and not an irrational

whim. On the other hand, the British law that a contract to be enforceable by an action in the Courts must be based upon an adequate consideration has supporters, and the amalgamation of the Courts is likely to further its extension, though whether the grafting of another system of law upon the old root without regard to underlying principles is desirable is a matter upon which there is room for some difference of opinion. In the formalities necessary to a contract there is considerable divergence between English and Roman-Dutch law. There is nothing of the character of the Statute of Frauds requiring that certain transactions, in order to have full legal effect, must be in writing, and a "deed" as understood in Roman-Dutch law differs from the English document. It is generally a notarial deed, being drawn up and sealed by a notary, who must take care that the parties understand its contents. It is usually signed by the parties in the presence of witnesses. The delivery of the document is not an essential to its validity as in English law. The notary retains the original, but may give signed copies of it, which are recognized for legal purposes. In Dutch law, documents of this character are not involved in legal technicalities to the same extent as in British law, and may be taken to possess their obvious and straightforward meaning. In regard to joint contracts there is a point worthy of attention. It is a well-known principle of English law that where several persons make a joint contract each is liable for the whole although the contract be joint. If one of the parties to a contract dies, the other two remain liable for its completion. But under Roman-Dutch law if, for example, A, B, and C contract to pay D £150, each is liable only for the payment of £50. If C dies, his estate becomes liable for that amount, and the whole does not fall on A and B unless there is an express stipulation to that effect. In regard to the extinction of a debt there are noticeable distinctions between the two systems of law.

Sale of Goods

There are some distinctions deserving of notice in regard to the sale of goods. In the case of a sale where credit has not been given, the buyer does not become the possessor of the property unless he has paid the purchase price. Moreover, it may not only be reclaimed from him but also from an innocent purchaser. Obviously this rule may create considerable hardship, but it is mitigated in so far that the goods must be reclaimed within a reasonable time, which, in the case of bankrupts' estates, varies in the different provinces. The risk attaching to the deterioration of goods, as well as the profit, does not pass to the buyer with the ownership as in England, but is his as soon as the contract of sale has been concluded by mutual consent. The goods may have been neither delivered nor paid for. There is, however, an important exception in the case of goods sold by weight, measure, or number, when the risk remains with the seller until they have been weighed, measured, or counted. Owing to the conditions of sale, sellers' lien and stoppage *in transitu* are unknown to Roman-Dutch law, but the latter has been introduced into Cape Colony by statute. Similarly, in many other matters connected with commercial relations the old Roman-Dutch law makes no provisions for modern conditions, with the result that the English law has been adopted practically *in toto*, as, for example, the law of agency and bills of exchange.

Company Law

The law of Cape Colony does not comprise any of the provisions of the British Acts of 1900 and 1907 incorporated in the Consolidation Act of 1908. The most important point of difference in the Cape Acts as compared with the corresponding section of the British Act is the extension to voluntary liquidations of the provisions as to enquiry into the causes of the failure of a company, and as to the conduct of its directors, which under the British law are applicable only in the case of companies ordered by the Court to be wound up compulsorily. Very little legislation appears to have been needed in Natal for the protection of shareholders and creditors, and the few provisions that there are seem to have been followed closely in the Orange Free State. In the Transvaal has been adopted the exact wording of the British Consolidation Act, 1908. (See also Chapter IV of this Part.)

INDIA

In India the common law of the different parts of the Empire does not provide a foundation even to the same extent as the Roman-Dutch law in South Africa. For all practical purposes the Hindu and Mohammedan law of contract has been superseded by the Indian Contract Act, which embodies the greater part of the law affecting commercial affairs, and follows in the main the provisions of British law. Legislation of this character applies throughout the whole of British

India, under the authority of the Legislative Council of the Governor-General to legislate for those provinces which possess subordinate legislatures of their own. The provincial legislative councils may not pass a law affecting any Act of Parliament, nor (without the previous sanction of the Governor-General) alter the Penal Code or pass laws affecting religious rites and usages, or finance, currency, post office or telegraphs, patents or copyright, or the army.

Commercial Law in India

As in South Africa, the practice of executing deeds in the English form has not been introduced into India, with the result that the legal doctrines arising therefrom do not claim attention. The Indian Contract Act, however, includes one interesting point touching upon the matter. In England a sealed deed is in itself sufficient to make valid a promise, but in India it is not sufficient, as no formality in itself can dispense with the need to prove that there was a consideration. The written and registered document can only give expression to an agreement "made on account of natural love and affection between parties standing in a near relation to each other". The section has given occasion for some interesting decisions. It must naturally be construed uniformly without regard to the variatinos in the reckoning of the degrees of relationship by the different personal lswa and customs. The whole clause must be read in one; that is to say, that nearness of relationship does not necessarily carry with it natural love and affection. A deed which set out in the preamble that it was the result of various quarrels and disagreements between husband and wife was held to be void. The definition of "consideration" in the Indian Contract Act is not the same as any authoritative British exposition. It runs: "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise". To each clause of the definition must be given its due weight. Under British law it is well settled that consideration must come from the promisee. But by the Indian Contract Act consideration may proceed from the promisee or any other person. In regard to the formalities the Act makes provision for agreements between parties at a distance. As regards acceptance of the contract, it provides that while the acceptance is on its way the receiver shall be bound and the sender not. The proposal, therefore, becomes a promise before it is certain that there is any consideration for it. Revocation is complete "as against the person who makes it, when it is put into course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it, as against the person to whom it is made, when it comes to his knowledge". This definitely decides a point which remains doubtful in Britain, whether a telegram revoking an acceptance sent by letter, and arriving before the letter, is operative or not. In the portion of the Indian Contract Act relating to the sale of goods, the definition of "goods" is much wider than that contained in the British Sale of Goods Act. "In this chapter," it enacts, "the word 'goods' means and includes every kind of moveable property," and comprises, therefore, stocks and shares, debentures, and securities of every kind, as well as merchandise; but the terms of the Act follow very closely the English measure.

CROWN COLONIES

The law in the Crown Colonies naturally closely follows British law, though other influences make themselves felt in some. In Ceylon, Roman-Dutch law is the underlying system, Cyprus has its Ottoman Commercial Code, Malta is affected by Italian law, and Mauritius and Seychelles have in force the French Codes. So far as official commercial transactions are concerned, the Crown Agents' Office (see Part I, Chapter IX) acts on behalf of the colonies and protectorates. The Crown Agents' Office is the general agency in Britain for their governments. It purchases and sends out the materials and goods of all kinds which are required by the Colonial Governments in Europe; it issues their public loans, keeps the register of their stock, pays the interest, and invests the sinking funds. The Office forms a kind of clearing-house for the adjustment of accounts between the various administrations served, and it transacts all kinds of miscellaneous financial business, besides acting as the channel of communication between Colonial Governments and their consulting engineers in this country. By the Colonial Office Regulations, orders from the Crown Colonies will in no case be given directly or through local agents to firms in the United Kingdom or on the Continent of Europe, although the names of firms whom the Colonial Governments may for any reason wish to employ may be mentioned in the body of the requisition forwarded

to the Crown Agents, to be adopted or not at their discretion.

Gibraltar and Malta

Among the Mediterranean possessions it may be noted that in Gibraltar the English common law is in force. The laws were consolidated in 1890, embracing legislation on the lines of the British Factors Act, 1889; the Arbitration Act, 1889; the Partnership Act, 1890; and later, mercantile laws, such as the Sale of Goods Act, have been adapted to it by local enactment. In Malta there is a division of the Superior Court to deal with commercial causes.

East Indies

The Eastern possessions—Ceylon and the Straits Settlements in particular—naturally follow Indian law. In the latter colony an ordinance passed in 1878 enacted that "in all questions or issues which may hereafter arise, or which may have to be decided in this colony, with respect to the law of partnerships, joint-stock companies, corporations, banks and banking, principals and agents, carriers by land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like cases at the corresponding period, as if such question had arisen or had to be decided in Britain, unless in any case other provision is or shall be made by any statute now in force in this colony or hereafter to be enacted", with a special proviso exempting all matters connected with land.

Mauritius and Seychelles

The French Commercial Code was introduced into Mauritius in 1807, but naturally in the course of more than a century has been subjected to considerable modification, chiefly of an anglicizing character, and the same observation applies to the Seychelles.

West Indies

In the West Indies English law prevails in commercial matters, even in Trinidad, which was formerly under Spanish law, and St. Lucia, where the Coutume de Paris had the force of law.

West Africa

In the West African colonies English law as in force at a comparatively recent date has in most cases been adopted *en bloc*; but in some matters native law and custom has to be taken into account, though generally only in transactions between natives. Provision may also be found for a combined use of English and native law. In the Gold Coast, for example, it is provided that native law may be applied "where it may appear to the Court that substantial injustice would be done to either party by a strict adherence to the rules of English law". Further, it is enacted that "no party shall be entitled to claim the benefit of any local law or custom, if it shall appear, either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connection with such transactions should be regulated exclusively by English law; and in cases where no express rule is applicable to any matter in controversy, the Court shall be governed by the principles of justice, equity, and good conscience". Indian law has been applied in those portions of East Africa under the protection of the British Crown.

BRITISH ISLES

Three parts of the Empire, outside the United Kingdom, do not quite fall within any of the divisions which have been adopted for the purpose of this general survey. The Isle of Man, Jersey, and Guernsey, with its adjacent islands, are self-governing and independent under forms of government to which there does not exist an exact parallel elsewhere. For commercial purposes the laws are very similar to English statutes. The differences are mainly in procedure, especially in the Channel Islands. Jersey and Guernsey each has its own legislature and Courts of Justice. It has been said that it is not easy "for two different nations to be more distinct from each other in many of their laws than Jersey and Guernsey", though both are based to a considerable extent upon the old "Coutume de Normandie", and both have Royal Courts formed of elected Jurats with a quaint and archaic procedure, which is hardly of sufficient interest to call for notice here.

AUTHORITIES

It is broadly true to say that throughout the Empire the main principles of English law prevail in matters relating to contract, principal and agent, and other important branches of commercial law, such as companies, partnership, and sale of goods. The annotated edition of the Bills of Exchange Act, by Sir Mackenzie Chalmers, includes an appendix showing the extent to which it has been adopted, with or without small modifications, throughout the British dominions. A detailed statement of the law in force has not been available in any comprehensive form. A few English textbooks have been annotated with notes applicable to a particular Dominion. Textbooks are published occasionally in the Dominions dealing with special branches of commercial law, and there are several annotated editions of the Indian Contract Act. The publication of a series of volumes containing the commercial laws of the world, begun in 1911, is a long-delayed undertaking which should be of considerable value in this connection, since seven volumes will be devoted to the laws of the British Empire. The commercial law of Great Britain and Ireland will occupy two volumes. The others will contain the British Islands and the Mediterranean Colonies; the Dominion of Canada, Newfoundland, and the American Colonies; India and the Eastern Colonies; South, West, and East Africa; and Australasia, with the Pacific Islands.

PART IV

FINANCE

INTRODUCTION

In this Part Business is treated under the heading of Finance. There naturally fall into it a consideration of Money and Currency, and some general principles; an examination into that familiar but not easily understood entity, the Money Market, with a popular explanation of the operation of the Bank Rate, the functions of the Banks, bill brokers and discount houses; and a glance at that common feature in the newspaper, a "Money Market Report".

Banking is treated in two Chapters. The first treats of its ordinary business and practice; with an account of the procedure of the Bank of England and other banks, the distinguishing features of banking in Scotland and Ireland, of the great Continental and American banks, and of the banks and banking systems of the British Dominions. A second Chapter deals with the ordinary law of Banker and Customer.

The theory of Foreign Exchanges is briefly and practically discussed. Two Chapters are devoted to Stock Exchanges, their constitution and practice, with the various classes of securities. An explanation of an ordinary Stock Exchange transaction, a discussion of new issues, markets, and quotations, with sample lists, and some useful information as to foreign Stock Exchanges, are given. It has been thought advisable also to deal with the law of the Stock Exchange in a separate Chapter, but there, again, the subject has been treated practically, in accordance with the general scheme of the work.

An important article on the Export of Capital by so eminent an authority as Sir Edgar Speyer shows how groundless are the fears entertained in some quarters as to its detrimental effect upon British interests, and, on the contrary, the amazing influence British Capital has had upon the extension of British trade abroad. Especially noteworthy is the service rendered by such capital in the British Dominions and Possessions and India, and the preference which has been shown by the Mother Country in this respect, estimated at a saving of £10,000,000 annually in interest to the Colonies and India. In other words, such loans have been granted at a rate at least one per cent cheaper than those contracted in foreign countries.

The financial and commercial interests of Britain have been chiefly menaced in

recent times by the alarming labour unrest in so many of the leading industries at home, and the uncertainty in international politics, but happily by no war in which this country has been directly concerned. The year 1911 was notable for an unexampled series of strikes, and by a temporary paralysis of its railway system. Notwithstanding this, the Railway Companies showed on the whole better results, and considerable activity in some shares was due to absorptions or amalgamations, a policy extending also to other traffic companies. Unfortunately the early part of 1912 saw the even more serious strike in the coal trade.

Although in some quarters aggregations of capital in leading industries have been regarded as tending towards Trusts inimical to the public welfare, Britain is far from having to consider such combines as now present to the American people what is admitted to be their most important commercial problem.

The use of the word "bank" by institutions which are not properly banks has been much discussed in recent times. This has been partly due to the abuse of the word by those who are no more than money-lenders, and who, by the adoption of some attractive title comprising the word "bank", have obtained credit and reputation which they would not otherwise have done, resulting in loss of money to the public. In this respect Parliament has already had something to say. The Money-lenders Act, 1911, provides that no person shall be registered as a money-lender under any name including the word "bank", or under any name implying that he carries on banking business; and if any money-lender is registered under such name, the name is to be removed from the register. The issue or publication, in the course of carrying on a money-lending business, of any circular, notice, advertisement, or letter containing expressions which might reasonably be held to imply that a money-lender carries on banking business, is made an offence subject to penalties. As far, therefore, as this particular grievance is concerned the remedy has been already applied. It is, however, felt that the danger to the public does not consist solely in the unscrupulous use of the term, and this aspect has been brought into public notice by the failure of a large institution which, established as a building society, ought never to have engaged in banking. It is thought by many that some restriction should be placed upon the use of the word "bank", or a security demanded in the public interest from those who engage in banking transactions. It is a question which, no doubt, requires very careful consideration from all sides before legislation is undertaken. Elsewhere it is noticed that such a restriction is applied in Canada, a country which is regarded as standing very high in its banking traditions.

A very noticeable feature with regard to banks has been the extent to which amalgamation has proceeded, the small private bank becoming a rarity, and more and more of the smaller public banks being absorbed by the larger. There has also been a more determined entrance of British banks into foreign business, due, it may be, to the extent to which foreign banks have established themselves in London. That very successful Government institution, the Post Office Savings Bank, celebrated its jubilee in 1911.

All banks have suffered considerably by the depreciation of their gilt-edged securities. Lord St. Aldwyn, in a recent speech, said that nine out of the principal London banks since the year 1903 had written off in their published accounts, besides anything that might have been allowed for out of their undisclosed reserves, £6,285,000 on account of depreciation in securities, and the tendency of gilt-edged securities was still to go down. The possibility had to be faced that something more might be required in the future.

The depreciation of Consols, the premier Government security, has been the subject of special discussion and suggested remedy. It is more than doubtful, however, if any of the suggestions are such that they can be acted upon, although the Chancellor of the Exchequer promised a sympathetic consideration to all. This depreciation is, no doubt, due to a certain degree to the wider area of securities which are now available for trustees under recent enactments.

The object of this Part, however, is not to deal with questions of high finance which for the time may be agitating the minds of eminent authorities, but with those broad general principles of financial business which are of daily and common interest to all engaged in commerce.

CHAPTER I

MONEY, CURRENCY, AND INSTRUMENTS OF EXCHANGE

The Origin and Development of Money—Advantages of Gold and Silver—Coined Money—Paper Currency.

In the complex machinery of our modern economic system there is nothing playing so important a part as money, and yet there is probably no subject of such general importance regarding the science of which the average man—and this includes business men of all grades—is so ignorant. In our modern society money is the instrument which binds each individual to the whole, and by means of which the relation of each single unit of the community to the rest of the community is determined and adjusted. And while an individual may be a most successful man of affairs and yet remain in ignorance of the science of business in many of its departments, it certainly behoves him to become acquainted with at least the elements of that great section of economic science conveniently comprehended under the heading of "Money".

THE ORIGIN AND DEVELOPMENT OF MONEY

In the course of human development few things have been more marked than the degree to which the products of each man's industry have diverged from his own immediate requirements. The great majority of workers nowadays produce only the merest fraction of their own requirements, but, on the other hand, produce a thousandfold more than they individually require of one given article or commodity. In primitive times, however, this was not the case, and the individual, or small bodies of individuals, produced sufficient for their own crude needs. During the age that separates that time from the present day, a system of barter or exchange of commodities had perforce to spring up, and as the cumbersome and oftentimes impracticable nature of this method made itself apparent, the need for some common denominator of value, in which the exchange value of some indivisible article could be set against two or three other articles, necessarily led to the adoption of something that could generally be used to express the measure of value. It will be seen, therefore, that from the outset it becomes necessary to regard money as having a special quality of its own. By this is meant that, while one may use a commodity as money, it is not passed from individual to individual as a commodity to be consumed or made use of, but is passed from one to the other as stored-up value to be transferred sooner or later to another individual in exchange either for other commodities or services. In other words, while commodities are produced for consumption or use by the individual, the function of money is not to find an abiding place with any one individual, but to pass from hand to hand. This difference, therefore, between a commodity and money does not rest upon the respective constituents of the two things, for money could, for the matter of that, be a commodity or article of consumption or use, but lies in the separate function already referred to.

Early Forms of Money

It was natural enough that in the early stages of human society something in general demand

should be used as this common denominator of value, and it is not surprising, therefore, that the earliest records we have show that oxen were employed for this specific purpose. Inasmuch as with but slight encouragement they would move themselves, cattle were not wholly unsatisfactory media; but there were decided disadvantages, the value of an ox to its owner being subject to considerable fluctuations. For example, an ox may break his leg; then again, cattle have a habit of dying sooner or later, and in no time has the value of a dead ox been as great as that of a live one.

Among those peoples who devoted themselves to agriculture it was natural that fruits of the soil should become a measure of value and means of payment, and in the case of warfaring tribes it is easy to comprehend how weapons and captives of war, i.e. slaves, should be used for the same purpose.

Metallic Money

As intercourse with other peoples extended, the need for a means of exchange or payment, acceptable over a widespread area, would make itself felt, and thus it is probable that it was not long before it was found that metals fulfilled this purpose more successfully than fruits of the soil, cattle, or even slaves.

To begin with, both base and noble metals were used. In ancient Greece iron was used, the Phœnicians employed tin, and the Romans, later on, used coins of copper and bronze. On the other hand, gold and silver were known as a means of exchange to the earliest inhabitants of Assyria, Babylon, and Egypt. In course of time the more primitive forms of money already mentioned, as well as the base metals, came to be less and less employed, gold and silver gradually becoming preponderant as symbols of value and media of exchange.

ADVANTAGES OF GOLD AND SILVER

At first sight it is not apparent why those metals which have come to be the most generally accepted forms of money should be precisely those which are not specially suitable for any useful purpose, but serve primarily for decoration, ministering rather to vanity than to any real requirement of mankind, and that they should be coveted to such an extent that everyone is prepared to receive in exchange for the necessaries of life pieces of metal serving no other useful purpose. This paradox is, however, merely superficial, and careful consideration of the circumstances will show us that it is precisely in consequence of the fact that they are not requisite to the ordinary needs of life, combined with their relative scarcity, pleasing appearance, and other special qualities to which reference will be made, that gold and silver have become the circulating media of payment and denominators of value of the civilized world.

In the first place, the beautiful appearance of gold and silver and their malleability render them peculiarly suited to the manufacture of jewellery and ornaments, without the question of usefulness entering into the matter. Experience shows that human nature is so constituted that the desire for necessities is much more limited in extent than the desire for luxuries. No one stores up more food materials than are necessary for the requirements of a short period, but there are hardly any limits to the desire for the accumulation of articles of adornment. The individual, therefore, who had a superfluity of some of the necessities of life, was always prepared to give up some of them in exchange for the precious metals, worked or unworked, the possession of which could minister to his vanity and improve his (and of course *her*) appearance, and this universal trait served to create the feeling that one could obtain at any time in exchange for them the necessities of life wherever individuals had more than was needed for their own requirements. Probably money in the sense that we understand it owes its origin to the commencement of commerce between different peoples, and in Lord Leighton's fine painting on the walls of the London Royal Exchange, showing the beginnings of commerce in this country, we see the Phœnicians offering the ancient Britons gold and silver and garments dyed with the much-coveted purple (articles of adornment, it will be seen) in exchange for the raw products of this country.

Gold and silver, however, combine within themselves the following qualities, which make them specially suited to the purpose of a medium of exchange passing from hand to hand.

Durability. — Whilst foodstuffs, clothing materials, and other necessaries can only be stored up for a limited period, the precious metals can be preserved in quantities for a time practically unlimited, as they are not affected by air, water, or cold, and as regards heat, it requires a very high temperature indeed before they reach a molten state.

Uniformity.—Gold and silver are, or can be made, equal throughout, i.e. a block, bar, or piece can be so refined that any one part of it is of precisely the same value as any other. This quality, it is true, gold and silver share with all metals.

Cognizability.—The two metals are easily recognized and identified.

Divisibility and Reconvertibility.—Like other metals, gold and silver can be divided into any desired number of parts without loss of value, and can as readily be re-united by the process of smelting; this is a quality possessed by no other substance having the same degree of durability.

Transportability.—The comparative scarcity of the precious metals confers a high value upon relatively small quantities, and their transport from one place to another is not difficult. A German scientist has calculated that the transportability of gold is 447,772, and that of silver 15,534, times that of wheat.

Needless to say, it must have required centuries before gold and silver came to enjoy the almost exclusive position they do now as circulating media of exchange, and it must not be thought that their predominant position in this respect has never been disputed. So recently as the first half of the nineteenth century platinum coins of three, six, and twelve roubles were introduced into Russia, but time did not confirm the apparent claims of this metal to equal recognition with gold and silver. As regards bronze, which is still commonly used for the subsidiary coinage, it has not been able to maintain its position, and it can already be prophesied that it will ultimately be superseded by the more suitable nickel. Here, therefore, in our own time we have an instance of the evolution of the fittest medium for one of the subdivisions of money.

Stability of Value

Reference has already been made to the comparative scarcity of the precious metals, and in this connection their durability confers upon the existing stocks a considerable degree of stability and freedom from violent fluctuations arising from fresh production. In other words, the existing supplies being practically indestructible and unconsumable, their proportion to new production is greater than that of existing stocks of most other commodities could possibly be, and only an exceptionally increased or decreased production over a long period can have any material effect upon the value of the *whole* of the metal supply.

Another factor contributes to the greater freedom from fluctuations in value of the precious metals. The only purpose these metals serve, apart from the money function, being that of adornment or decoration, they are not liable to rise or fall in value in anything like the same degree as necessaries. Man *must* have food, and if the supply is not equal to the demand, the rise in price of this necessary may be a very great one; on the other hand, should there be an over-production of food, which from its perishable nature cannot be stored for a very long time, the price may fall to a very low level before purchasers are attracted; whereas in the case of articles of luxury or adornment, the desire for which, as has already been indicated, is practically illimitable, a much narrower increase or reduction will restore the balance between supply and demand. This lesser susceptibility to fluctuations in value is an inestimable advantage in money, which has to serve not merely as a means of determining the quantity of one commodity or service that has to be rendered for another, but has also to serve as a means of determining the value of the equivalent which has to be given at a future date for commodities or services rendered at the present time. As a matter of fact, existing forms of money do not fulfil this function perfectly, for, as is well known, the purchasing power of money several years hence may be less or more than it is now, so that should the purchasing power of money (as expressed by the amount of commodities or services that will be given in exchange for it) be less in ten years' time, the individual who now lends money or gives value for, say, £100, and receives that sum of money at the end of the stipulated period, in coin of the realm, is not getting back the full equivalent of what he has given. Much greater stability in the value of money would undoubtedly be achieved by the adoption of index-prices, but we are still a long way from the period when they will be accepted as a true measure of value by other than economists and statisticians. Meantime, as compared with all its predecessors, there is no doubt that gold, and in a less degree silver, fulfil the one great function of money, viz. the denomination of values, present and future.

COINED MONEY

Thus far we have dealt generally with the precious metals in bulk, but not specifically with coined metal. It would be hard to overestimate the enormous importance of the invention of coinage. The advantages attached to gold and silver as a general means of exchange have already been referred to, but a great hindrance to their circulation was the difficulty experienced by individual members of the community in determining the exact weight and purity of the precious metals in

whatever shape or form they were passed from hand to hand. Even in our own day it requires the skill of the assayer to determine exactly the proportion of alloy present in a given quantity of gold or silver. A step towards removal of the difficulty was the circulation of these metals in rings and bars of determined fineness and weight. In Babylon, where the precious metals appear first to have achieved supremacy as a means of exchange, they were reckoned according to fixed weights divided sexagesimally—one talent equalling sixty mines, the mine in turn being reckoned equal to sixty shekels; and this system gradually spread throughout what is now known as Asia Minor, Egypt, and Greece. In spite of this comparatively high development, the peoples mentioned do not appear to have thought of what now seems the most obvious expedient of attesting by means of an impress fixed weights and finenesses, for although the creation of certain weights marked a great advance, there was no guarantee against fraud in either of these directions.

So far as can be determined, the oldest coins that have been discovered come from Asia Minor, and date from the seventh century B.C. At the commencement only one side of the piece of metal bore an impression, such as that of a lion's head, and it was not until long after—about the middle of the fifth century A.D.—that the reverse of the coin also came to represent anything definite. It is interesting to note that the earliest coins portrayed the heads of animals, or religious ideas, such as effigies of the gods. Inscriptions denoting the place of mintage or the name of the ruling prince soon followed, but the custom of giving the effigy of the monarch first arose in Greece.

To understand the vast change brought about by the invention of coinage, it is necessary to realize that a gold or silver coin as we know it is something more than a piece or bar of precious metal with its weight and fineness stamped thereon. This of itself is a great thing, as it constitutes a certificate of value. As a matter of fact, gold bars do largely serve as the ruling international money of the world underlying our vast credit system, most of the gold that is shipped from one country to another to liquidate the international balance of indebtedness being in this shape; but while there is a tendency towards uniformity, one gold bar may differ from another both as regards weight and fineness. A sovereign, for instance, is not merely a certificate of a certain quantity and fineness, but it is one of a large number of precisely similar units—that is to say, instead of possessing individuality as does a gold or silver bar, it is one of a species. A piece of metal, therefore, however beautifully turned out, and whatever impression it may bear, cannot be deemed a coin unless it is one of a number of pieces absolutely identical in every respect within such limits as science and technique permit; and herein lies the great superiority of the coin over every other form of metal money.

To hinder the fraudulent reduction by clipping, "sweating", or other means, of the quantity of precious metal contained in each coin, the impression is made to cover the whole of the coin, as opposed to the stamping of a mere portion of a bar, in addition to which the edges are milled. This latter precaution is not taken with bronze or nickel coinage, which serves merely the subsidiary purpose of a fractional currency.

Coins soon came to be generally known by distinctive names, and although at the outset such money was nothing more than a measure of weight or quantity—such as Drachma, Talent, Livre, Pound, Mark, &c.—it soon came to have a distinct significance altogether independent of its original meaning. This practice largely facilitated trade, for wherever the use of a certain coin spread throughout a given area, bargains and contracts would be made in determined sums of gold, silver, or copper or bronze coins, instead of by the much clumsier method of expressing certain weights of those metals of a certified fineness.

Although at the commencement some coins appear to have been minted—if the term may be used for such crude specimens of coinage—by private merchants, the State appears at a very early stage to have taken over the function of making and regulating the coinage, and soon constituted this a monopoly. The principal attribute of a coin being that it should stand as a certificate of a given weight and fineness, obviously the more authoritative the individual or institution certifying to the fact, the less questioned would it be, and it certainly appeared meet and right that the public powers, which in the interests of the community ordained certain standards of measure and weight, should assume the same functions in regard to the standards of exchange. Perhaps it was not always so much solicitude for the public welfare which prompted this action as discovery of the fact that once people were accustomed to accept a coin as indicative of a certain fixed value they would, within certain limits, continue to accept such coins at the same value, even though the proportion of alloy were increased—a profitable source of revenue to many a ruler. Determination of the precise limits within which this was possible has cost the world a great deal.

Free Minting of Gold

In practically every country of importance the minting of the gold coinage is done at the cost of the State, which loses on the transaction, as the gold coin contains its full equivalent in weight and fineness of the value expressed thereon; that is to say, the British sovereign contains 123·27447 grains troy of standard gold bullion, which consists of eleven parts of pure gold and one part copper alloy, i.e. 22 carat gold. This works out at £3, 17*s.* 10½*d.* per ounce, and anyone is entitled to take gold to the Mint and have it made into coins calculated at the rate named, free of all charge. In practice this is not done, as one would have to wait a certain period for the process of manufacture, during which there would be a loss of interest. It is found less troublesome to sell gold to the Bank of England at its fixed rate of £3, 17*s.* 9*d.* per ounce, the 1½*d.* difference representing the bank's charge for discounting and its trouble in the matter. The loss incurred by the State in coining gold free of charge is usually more than covered by the profit on the silver coinage, for as a consequence of the fall in the value of that metal silver coins do not, like the gold ones, contain their face or nominal value, which is one of the reasons for which silver in most countries is not legal tender for more than a certain amount. This most practical solution of a difficult problem originated in the United Kingdom.

Remedy Allowances

Even our magnificently equipped modern mints cannot turn out coins absolutely identical in weight, therefore the laws set forth certain limits known as "remedy" or "tolerance", any coin exceeding which must not leave the mint, but has to be smelted and re-minted. In the case of the United Kingdom these limits as to gold are a variation of 2 ‰ (two per thousand) in the fineness of the metal, and as to weight two-tenths of a grain in a sovereign and three-twentieths of a grain in the half-sovereign.

Light Coins

In the same way it is necessary that the law should determine certain limits beyond which coins in circulation shall no longer be legal tender, for with usage coins must necessarily lose weight in course of time. These limits have to be a little wider than is the case with the mint remedy, and in the United Kingdom a sovereign is not legal tender as soon as its weight is below 122·5 grains.

Any loss arising from the possession of gold coins of light weight has to be borne by the holder, and light gold coins presented to the Bank of England are cut so that they may not be further circulated, and the possessor receives only the actual value of the gold contents. This procedure is not general, for in Germany, for example, all light gold coins which come into the coffers of State and municipal institutions, as well as the banks, are withdrawn from circulation and are melted down and re-coined, the consequent loss being borne by the State.

Gresham's Law

The circulation of a large number of light, mutilated, or debased gold coins is detrimental to a country, for it hinders trade with foreign countries. As soon as a coin is sent abroad, its value is determined not by custom or law but by the weight and fineness of its gold contents, and if there is in circulation a large number of inferior coins, it results in the gradual disappearance of the good coins. This is known as Gresham's Law, Sir Thomas Gresham having first given clear expression to it in the following words: "If coins of the same metal but of varying weight and quality circulate together at the same nominal value, the worse coins will tend to drive the better from circulation, but the better will never drive out the bad". The truth of this is obvious, for when the balance of trade is against a country, or when from any cause such as, for example, the floating of a large foreign loan, it becomes necessary to export gold, the money changers or bullion brokers will obviously ship gold pieces of full weight in preference to light ones, the latter being more likely to circulate freely in the country of origin, whereas when shipped in bulk, they have inevitably to stand the test of weight.

Bimetallism

This law operates also where coins of two metals are equally legal tender, with a certain ratio fixed between them. So long as this ratio correctly reflects the difference in market value, no difficulties need arise, but as soon as such ratio ceases to correspond to the market value, one of the metals, viz. the overvalued one, will remain in circulation whilst the other will disappear, for it is then profitable to employ it as a commodity. In many countries gold and silver used to circulate at a fixed ratio, but silver, owing to overproduction and other causes, having fallen greatly in value, the mints have gradually been closed to the free coinage of this metal, and in

many countries silver coins are only legal tender up to a certain amount. There is still a school which thinks that a bimetallic system of money, i.e. gold and silver circulating each as legal tender in fixed ratio, is superior to a monetary system based on a single metal, gold. Some countries also have a monetary system based on silver only. Still, it is an indisputable fact that country after country is adopting the gold standard, using silver simply as subsidiary coinage. Of late years Russia, Japan, and Mexico have joined the gold-standard countries, and China may be the next. By this time it is probably safe to assert that even if there is much to be said for a bimetallic system, just as there are many arguments in favour of a duodecimal system, the mere fact that the majority of civilized nations have adopted the gold standard will be sufficient to cause the ultimate adhesion of the remainder, as is almost already the case with the metric system.

PAPER CURRENCY

Thus far we have dealt with metallic money. In all countries, however, in greater or less degree, there exists also a paper currency. This differs greatly according to whether it is convertible or inconvertible. By convertible we mean the right on the part of the owner to go to a certain bank or government office and demand the equivalent in gold of the face value imprinted upon the note. British bank notes are a familiar form of convertible paper currency, for the holder is entitled at any moment to present them to the bank of issue and to receive in exchange therefor, without any deduction, the exact sum, in gold coin, that is printed on them. In many countries, however, the State issues inconvertible paper currency, that is, paper notes on which a certain value is printed, but which carry with them no legal obligation on the part of the issuer, i.e. the Government, to give gold in exchange for them. Where this relates merely to the subsidiary coinage, and the notes are not legal tender above a certain sum, as is the case in several countries, no harm arises; but when there are no such strict limits, and paper money nominally of the same value as the gold coinage, but not convertible into gold, is in circulation, a speedy result is that, in accordance with Gresham's Law, the gold leaves the country and the paper money falls to a discount. In other words, while at the start there may be no difference in the value of a gold dollar and a paper dollar, after a while the paper dollar goes to a discount, or, as it is generally expressed, gold goes to a premium, and the business of the country is dislocated by the fact that it is impossible to know from day to day precisely how many paper dollars it will be necessary to pay out in order to secure one gold dollar's worth of products. The temptation on the part of a Government to increase its resources by means of the issue of paper money is great, and as foreign creditors will not accept paper money when there is any doubt as to its convertibility into gold, it will readily be seen how the value of an inconvertible paper currency can be lessened and be subject to violent fluctuations. This has been the case in countries like Argentina, Brazil, and Chile; but in the first two countries the troubles arising therefrom have almost disappeared, owing to the Government's having established departments which accumulate gold and issue notes, *convertible into gold* at a fixed rate, such rate, however, being lower than the gold dollar. Thus we have in Argentina two currencies, the gold dollar, worth about 4*s.* 0½*d.*, and the paper dollar, worth about 1*s.* 9*d.*, the fixed ratio of the paper currency to gold being 100 to 44, i.e. the holder of 100 paper dollars (*moneda nacional*) is entitled to receive in exchange therefor at the Government Department, named the *Caja de Conversion*, 44 gold dollars. In Brazil the paper milreis has been fixed in the same way at a value of 1*s.* 4*d.*, the gold milreis being worth 2*s.* 3*d.*

Paper being a much more portable form of money than metal, it is easy to see that for large sums it would be more popular than gold, so long as the holder could be absolutely assured that he could at any time convert it into that metal. In so far as the national bank of a country receives gold on deposit and issues in exchange for it a certificate that it holds it, and a promise to pay it out on presentation of the certificate or note, we have the ideal form of convertible paper currency. In actual practice, however, it is found that where a large number of such notes are issued, it is practically impossible for each and every holder to require payment in gold at the same moment, so that there is a certain margin within which an issue of such bank notes need not be actually covered by the equivalent amount of gold. What that margin of safety is has never been definitely determined, although in the earlier days of our banking system, when private bankers issued notes and passed them into circulation without regard to the amount of gold they held to cover them, bankruptcy and disaster to whole communities were of frequent occurrence.

Bank of England Notes

The notes of the Bank of England are a good example of convertible paper money, the amount of notes issued, however, being in excess of the gold deposits held against them. This margin is, however, regulated by the famous Bank Act of 1844, which settled the lines on which the note issues of this country should develop. When the Bank of England was formed in the year 1694, it lent to the Government the whole of its capital of £1,200,000, on which it received 8 per cent interest, as well as £4000 per annum for management purposes, together with the privilege of issuing bank notes to the extent of its capital. The capital of the Bank was gradually increased, as was the amount lent to the Government, until it reached the figure of £11,015,100 The amount of bank notes that the Bank was permitted to issue advanced *pari passu* with the sum lent to the Government, and later on the Bank was permitted to issue notes up to any amount it pleased, with the obligation, however, to pay out gold in exchange for them on demand. Towards the end of the eighteenth century the amount of gold held by the Bank was depleted to such an extent that an Order in Council was made in 1797 restricting the Bank from paying out gold except under certain conditions. The Bank of England had been creating vast quantities of notes, and there were at the same time in circulation a large number of country bank notes (it should here be mentioned that from the early days of its history until 1816 the Bank of England enjoyed the monopoly in London of issuing notes). In the interim the value of the Bank of England notes depreciated, so that it required considerably more in notes than in sovereigns to purchase an ounce of gold—in other words, the purchasing power of bank notes was less than the purchasing power of gold of the same denomination, and gold was beginning to disappear from circulation. By the year 1813 this depreciation had reached such a stage that the £1 bank note was valued at 14*s.* 2*d.* England was therefore at that time in possession of an inconvertible paper currency, and it was only by the drastic remedy of numerous country banks failing so badly that their notes became valueless, that the paper currency of the country decreased to more reasonable proportions. In 1816 the Bank of England resumed payments of its notes in gold; from 1817 to 1819, however, it again suspended gold payments, but since the latter date there has been no recurrence of inability on the part of the Bank of England to redeem the promise printed on the face of all its notes. In 1840 a Committee was appointed to consider the whole question of the note issue of the country, as a result of which the Bank Charter Act became law in 1844. Many people were of opinion that not a single bank note should be issued beyond the amount of gold held by the issuing bank—in other words, a bank note should be a certificate, and nothing more nor less, of so much gold held against it. Others were of opinion that notes could be issued in excess of the amount of gold held, so long as such notes corresponded to the actual business requirements of the community. The Act of 1844 regulated not only the note issues of the country, but also the working of the Bank of England, which it divided into two departments—the Issue Department and the Banking Department. The latter has really nothing more to do with the currency than any other bank, and may for this purpose be regarded as an entirely separate institution. The Issue Department was allowed to issue bank notes up to fourteen million pounds against securities of a like value held by it, included in which was the Government Debt of £11,015,100, but for every note issued over and above these fourteen million pounds the corresponding amount of gold and silver bullion (the latter never to exceed 25 per cent of the total) had to be held by the Bank.

In view of the circumstances, it was obvious that legislation covering the note issue of the country could not be effective unless it also regulated the issue of notes by banks other than the Bank of England. The latter institution had a monopoly of the issue of bank notes in London itself and within a three-mile circle, and beyond this boundary and a distance of sixty-five miles only such banks as had less than ten partners and were established before 1844 were allowed to issue notes, whilst beyond the sixty-five-mile limit only such banks as had already notes in issue were to be allowed to continue to circulate them. The note issues of these outside banks were restricted to a certain maximum corresponding to the average amount of notes they had in circulation at the commencement of the year 1844, and an important provision was that in the event of a country joint-stock bank opening an office in London, it should thereby forfeit its right to issue notes, and that the Bank of England should be permitted to increase its uncovered issue—that is to say, uncovered by gold—to the extent of two-thirds of any such lapsed issues. Furthermore, any bank suspending its issue should not be allowed to resume it, and any bank that once became bankrupt should forfeit its right to issue notes. The whole purpose of this legislation was undoubtedly gradually to drive out of existence the note issues of all outside banks, and to confer

the monopoly of bank notes upon the Bank of England. At the time the Act was passed, the total amount of notes which outside banks in England and Wales were authorized to issue was £8,631,647, divided between 280 banks, and one of the results of the modern tendency towards absorption of the country banks by the big London institutions has been a rapid diminution of country notes, and a corresponding increase to the extent of two-thirds of the lapsed issues in the amount of the authorized uncovered issue of the Bank of England, which at the end of 1911 was £18,450,000. The Act of 1844 applied only to England and Wales, but in the following year other Acts were passed dealing with Scotland and Ireland, providing that when the note circulation of a bank in either of those countries exceeds a certain sum, the bank must store at its head office the equivalent in gold and silver (the latter again not to exceed 25 per cent of the total) of the excess issue, such excess issue being calculated on an average of four weeks ending each Saturday. This bullion is not specifically allocated by the law to the notes, so that should a bank fail, it would only form part of the general assets.

The following tables show the authorized note issues of the United Kingdom as at the end of 1911:—

List of Banks with Note Issues at End of 1911

England and Wales

Name of Bank	Amount of Authorized Issue.
Bank of England	£18,450,000
Banbury Bank	43,457
Bedford Bank	34,218
Bicester and Oxfordshire Bank	27,090
East Riding Bank	53,392
Leeds Bank	130,757
Naval Bank, Plymouth	27,321
Newark and Sleaford Bank	51,615
Oxfordshire Witney Bank	11,852
Reading Bank—Simonds & Co.	37,519
Wellington Somerset Bank	6,528
Bank of Whitehaven, Limited	32,681
Halifax Commercial Banking Company, Limited	13,733
Lincoln and Lindsey Banking Company, Limited	51,620
Nottingham and Notts Banking Company, Limited	29,477
Sheffield and Hallamshire Banking Company	23,524
West Yorkshire Bank, Limited	18,534
Wilts and Dorset Banking Company, Limited	76,162
Total	£19,119,480

Scotland

Name of Bank.	Amount of Authorized Issue.
Bank of Scotland	£396,852
Royal Bank of Scotland	216,451
British Linen Bank	438,024
Commercial Bank of Scotland	374,880
National Bank of Scotland	297,024
Union Bank of Scotland	454,346
North of Scotland and Town and County Bank	224,452
Clydesdale Banking Company	274,321
Total	£2,676,350

Ireland

Name of Bank	Amount of Authorized Issue.
Bank of Ireland	£3,738,428
Provincial Bank of Ireland	927,667
Belfast Bank	281,611
Northern Bank	243,440
Ulster Bank	311,079
The National Bank	852,269
Total	£6,354,494

Note Issues of Banks in the United Kingdom at the End of 1911

Fixed Issue of the Bank of England	£18,450,000
Fixed Issue of Ten Private Banks in England and Wales	423,749
Fixed Issue of Seven Joint-Stock Banks in England and Wales	245,731
Fixed Issue of Eight Banks in Scotland	2,676,350
Fixed Issue of Six Banks in Ireland	6,354,494
Total Fixed Issue of Banks in the United Kingdom	£28,150,324

It will be seen from the foregoing table that in England and Wales the total note issue enjoyed by banks other than the Bank of England amounts to £669,480, and as the Bank of England is entitled to increase its uncovered note issue to the extent of two-thirds of any lapsed issues of other banks, the maximum uncovered issue which the Bank of England may attain is a little less than £19,000,000.

Results of the Bank Act

The intention of the framers of the Bank Act of 1844 that the Bank of England should be given a virtual monopoly of the note issue of the country, and that its notes should become practically "as good as gold", has to all intents and purposes been achieved, but it cannot be denied that in fixing the uncovered note issue at a certain figure for all time without any provision for such elasticity in the issue as might be required by the growth of commerce, the Act has been a hindrance

to business; and if the issue of the cheque had not been popularized to such an extent that it has become the real currency of commerce in this country, the effects of the Bank Act would have been maleficent. As it is, on three occasions during panics in 1847, 1857, and 1866 the Bank Act has been suspended, and the Bank of England issued more notes than it was entitled to do on the amount of gold deposited in the vaults. In Germany and other countries which have imitated the principle in this respect, the needful degree of elasticity appears to have been attained by means of an ingenious expedient. As in the case of the Bank of England, the Imperial Bank of Germany issues a fixed amount of notes against securities, but is permitted to exceed this limit when occasion arises, on payment to the Government of a tax of 5 per cent per annum on such excess issue. The Bank is therefore permitted to increase its note circulation when circumstances require it, but the tax of 5 per cent is an effective brake on the tendency unduly to increase the note issue, and is incidentally a source of revenue to the Government.

Considerable dissatisfaction with the working of the 1844 Act is expressed on all sides among the commercial community, many members of which are of opinion that the gold reserves of the country are too low, and it is only a question of time before the Bank Act is amended. One of the proposals put forward is that a certain number of inconvertible £1 notes should be issued by the Government, and this draws attention to the fact that whilst £1 bank notes circulate and are popular in Scotland and Ireland, their issue was abandoned by the Bank of England many years ago, the lowest note issued by that institution being £5.

Bills of Exchange

We have already seen that whilst metallic money forms the basis of all exchange transactions, its use as a circulating medium is supplemented by paper money, such as bank notes, which are to a certain extent certificates of so much gold held against them, or by inconvertible paper money or currency notes. These, however, are not of themselves sufficient to perform the monetary work of the world and to cause the wheels of commerce to revolve, and while metallic money remains the measure of value, it became necessary to invent further means of effecting payments, such as the bill of exchange and the cheque.

Authorities differ as to the origin of the Bill of Exchange, although it is generally assumed that this credit instrument first came into use in Italy, at the time of the First Crusades, when its use became common at the great fairs and markets which were held in Central and Western Europe. The many different coins and the weight of the silver currency in use, as well as the danger from robbers on their journeys, were all factors making the travelling merchants of the Middle Ages welcome some means of avoiding the necessity of carrying with them large sums of money. It became the custom, therefore, before undertaking such a business journey, to pay over to a banker the greater part of the sum that would be needed during the journey, and to receive in exchange therefor an order on some banker or merchant in the city of destination to pay out the equivalent amount. For a long time such payment was always made in the presence of a notary. This order, or bill, contained a promise of payment on the part of the drawer. In course of time, however, it became the custom for the person giving the bill to instruct a business friend or connection in the distant city to pay out the amount named thereon for his account. Such bills covered (1) a receipt or acknowledgment for the equivalent of the amount named thereon; (2) an order on some individual in relationship with the drawer to pay the said sum to the holder of the bill.

The following is a translation of a bill of exchange dating from the fourteenth century:—

> Pay against this first letter on the 9th of October to Lucas de Goro £45. They are the equivalent of the sum which I have received from Masio Reno Pay at the right time and debit the sum to my account. Christ be with you!
>
> Bonromeo de Bonromei
>
> sends thee greetings.
>
> Milan, 9th March, 1395.

Gradually the practice grew up of making bills negotiable, by the person in whose favour they were established passing on his right to receive the money by writing an instruction to that effect on the back of the bill, and with that the bill of exchange became a circulating medium. In addition to its use as a means of liquidating indebtedness and thereby avoiding the need of carrying or forwarding large sums of metal money, the bill of exchange became to the merchant enjoying good credit the most practicable means of utilizing his credit, in so far as, provided the individuals who had signed it were all of good credit, he was able to exchange it for metallic money before the due date by the simple expedient of discounting it. In other words, he borrowed money on the security of the obligations of the persons who had signed it.

The advantages of being able to dispose of a bill in this fashion were obvious, but the individual in the place of payment, to whom it was sooner or later transferred, would naturally enough in some cases be desirous of ascertaining before the due date that the person on whom it was drawn would be prepared in due course to honour it, and would exhibit it to him with that end in view. The promise on such an occasion of the drawee to pay was probably the origin of what we now know as the acceptance of a bill.

A merchant sending a consignment of goods to a trader in another city would draw upon such trader at a date subsequent to the arrival of the bill and goods, the idea being, presumably, that the latter should have time to dispose of the goods and receive the proceeds before paying for them. On his indicating on the bill his preparedness to meet it on the due date—in other words, by his acceptance of the bill—the document, provided, of course, that the acceptor's credit was good, would, as already indicated, be turned into cash by the process of discounting. The fundamental idea of a bill of exchange was that it was issued against value received, either in cash or goods, and the nature of the value received was usually expressed in the wording of the bill, and to this day it is necessary to insert the words "value received" in every foreign bill.

Generally as to Bills of Exchange and the law relating to all negotiable instruments see Part III, Chapter VII.

A foreign bill is usually made out in triplicate, the forms of wording being identical, except that each is expressed to be payable only on condition that neither of the other two has been paid. These three forms being transmitted separately, the risk of loss is rendered very slight. A foreign bill need not be stamped before it is issued. It must, however, be stamped before it can be negotiated in the United Kingdom.

It is not advisable to change the form of a bill.

Cheques

According to a report of the Commercial and Industrial Society of Ghent, the document now known as a "cheque" was in use in Antwerp from time immemorial under the Flemish name of *Bewijs*, and according to a remarkable work communicated in 1873 by the Banque Nationale of Belgium to the Belgian Government, ancient chronicles recorded that Sir Thomas Gresham visited Antwerp in 1537 to study this method of payment, and introduced it into England. Others trace the beginning of the cheque back to the fifteenth century, when, it is stated, it developed amidst the flourishing commercial cities of Italy in connection with the business of taking deposits of gold and silver—a close connection that subsists to this day.

In no country has the cheque become so common as in the United Kingdom and the United States of America.

In the eye of the law a cheque is "a bill of exchange drawn on a banker, payable on demand". In plain language, it is a written order by one person upon another, payable in ready money on demand.

British law provides that cheques shall only be drawn upon a bank—a restriction differentiating the cheque in a marked manner from a bill of exchange. In some countries, however, a cheque may be drawn on any person. In several countries the law provides that a cheque must be presented for payment within a certain period, but British law merely stipulates within a reasonable time. Bankers do not, however, pay cheques which are not presented within six (sometimes twelve) months of date. For legal reasons, and indeed for the sake of ordinary prudence, besides the business convenience of the drawer, it is advisable to cash or pay into one's bank for collection all cheques within a few hours, or at most a day or two of their receipt, provided, of course, they are not post-dated. (See also Chapter III of this Part and Part III, Chapter VII.)

The effect of the cheque being made payable to such and such a person "or order" is that it must be signed by the person named, or by someone duly authorized by him, before it can be paid. Usually this is done by endorsement, by the payee signing the back of the cheque, although sometimes—most frequently in the case of cheques drawn by companies in payment of dividends or interest, dividend warrants as they are termed—a place for such signature is provided on the face of the cheque, at the bottom left-hand corner.

As has already been stated, the use of the cheque as a means of payment has developed more in the United Kingdom than in any other country, and there is little doubt that the liquidation of by far the greater part of mutual indebtedness within the borders of the country is effected by means of this instrument. This popularity would never have been attained had it not been by the device of limiting to a certain desired extent the free circulation of this form of paper money, by marking it in such fashion that its encashment, should it fall into wrong hands, is rendered difficult, or at the least capable of being traced. This is effected by crossing the cheque, by writing on it either

(*a*) The words "and Company" or any abbreviation thereof between two parallel transverse lines; or

(*b*) Two parallel transverse lines simply, this being the more businesslike procedure. (See Part III, Chapter VII.)

The effect of this is to prevent a cheque from being paid across the counter of the bank, it having to be paid in to some banking account and collected by one banker from the other in the ordinary way. This obviously to a certain extent acts as a deterrent against theft, and, where this occurs, facilitates the tracing back of the cheque. If, within the transverse lines, is written the name of a certain bank, the banker on whom the cheque is drawn will pay it only to that bank. This special crossing, as well as any other crossing referred to, may be made by the drawer, the payee, or any other person through whose hands the cheque passes, and from the moment that such crossing is placed upon the cheque, its negotiability is obviously to that extent restricted.

The words "not negotiable" may also be written across the cheque within the transverse lines, and the effect of this is not, as is sometimes assumed, to render the cheque incapable of being passed from one person to another, but means that in the event of its falling into wrong hands and being cashed, the holder is in the position of a person holding stolen property, and has no rights to it beyond those which were enjoyed by his immediate transferor. This point is dealt with more fully elsewhere (Part III, Chapter VII). The addition of the words "a/c payee" to the crossing has become very common. Actually they possess no legal effect, and as a precautionary measure the words "not negotiable" are to be preferred.

As has already been indicated, it is precisely this ready means of effecting a remittance in cheap and expeditious form, while at the same time restricting payment in the manner shown, which has rendered the use of the cheque so popular, for in the majority of cases it obviates the necessity of sending the remittance by registered or insured post. It is advisable, therefore, as far as possible, and particularly where the name of the payee's banker is known, to make use of all the above crossings, and this is a strong argument in favour of the name of one's bankers appearing on all invoices, statements, &c. — a practice not sufficiently followed.

Marked or Certified Cheques

It often occurs that where certain negotiable securities, such as bonds or share warrants to bearer, have to be handed over against payment, for obvious reasons, an ordinary cheque is not accepted. As a rule, payment in such cases is effected by means of an approved draft, most conveniently on the Bank of England, such draft being furnished by one's banker on application; but in America to a large extent, and in the United Kingdom to some extent, in cases where an ordinary cheque is not sufficient, a marked or certified cheque is accepted. This is an ordinary cheque on which the banker has written words certifying that he will pay it on presentation.

Cheques in Foreign Countries

The cheque is known in other countries, and its advantages are so manifest, that in many countries efforts have been and are being made to popularize the use of this means of payment, and they are meeting with a certain degree of success, particularly in Germany. On the other hand, there has arisen on the Continent a form of cheque unknown in the United Kingdom which has achieved a surprising degree of popularity, so that it is gradually being introduced into all advanced countries, and it offers numerous advantages. This is the

Postal Cheque

The credit of the invention of this perhaps most modern and cheap form of transmitting money belongs to Austria. It is obvious that even in the United Kingdom there must still be vast numbers of people who have either not sufficient means or familiarity with business to have an ordinary current account with a bank. In the shape of the Post Office Savings Bank, however, there is at hand a democratic institution in which the humblest individual possessing only a few shillings of available capital can open an account. This occurred to the Austrian Post Office, which, in the year 1883, made arrangements whereby one depositor in the postal savings bank could transfer any part of his deposit to the account of another depositor by filling up a form; further, he was given the facility of making a form of withdrawal from his account payable to anyone else; and it was also rendered possible for anyone to pay in at any Post Office an amount to be placed to the credit of any person having an account in the Post Office Savings Bank. Seven years later similar facilities were offered to depositors in the Hungarian Post Office Savings Bank.

The great success that attended the introduction of this system showed that a real want had existed, and Switzerland copied it in 1906 and

Germany in 1909. Japan has already introduced it, and all appearances point to France following suit at an early date. The gradual extension of this system of Post Office cheques to all civilized countries appears probable, and on this account the following brief description of its operations may be of value.

So far as the internal handling of these cheques is concerned it is unnecessary to go into any detail, because it simply amounts to the Post Office Savings Bank, or, in those countries where the savings banks are not under the control of the Post Office, special departments of the latter, acting as ordinary bankers, opening current accounts and furnishing their customers with cheque books. The enormous advantage, however, is that one has to do with a bank having branches in every corner of the land, so that a debtor desiring to pay his account in the simplest possible form walks to the nearest Post Office, fills up a form, and hands it in with the necessary cash, or a cheque on his own account, by means of which the desired sum is placed to the credit of the account of the creditor. For this reason the note-paper and bill-heads of practically all firms in the countries named state the number of their account at the Post Office Bank. In Austria and Hungary interest at the rate of 2 per cent and in Switzerland at the rate of 1·8 per cent is allowed on the current accounts. Against this, certain charges on a very low scale are made for the various transactions.

Foreign Remittances

The extraordinary success which attended the introduction of the postal cheque in each country where it has become established soon gave rise to a demand for an extension of the same facilities to international remittances. For small amounts one can, of course, purchase foreign money orders, but these are comparatively expensive. As the result, an international agreement has been come to by the countries concerned whereby it is possible for a debtor in one country to pay an account due in another in precisely the same manner already indicated for internal remittances. This has proved so useful that the various Post Offices have established agencies in countries that have not yet adopted this system, so that they may extend to those countries the benefits of the system. This they have done by appointing important banks as their agents in France, Belgium, Italy, the United Kingdom, &c. Arrangements have also been made with most of the principal banks in the countries named to pay out or accept sums in respect of such transactions, and it may surprise many a reader to know that whether he be in a London suburb or the smallest provincial town, in other words within reach of a branch of any of the following banks: London and County, Lloyds Bank, Capital and Counties, Commercial Bank of Scotland, or Provincial Bank of Ireland, he is in direct touch for the purposes indicated with the Austrian Post Office Savings Bank.

CHAPTER II

BANKING AT HOME AND ABROAD

Introductory—Practice of Banking—The Bank of England—Scotland—Ireland—France—Germany—Austria-Hungary—Russia—Finland—Italy—Switzerland—Canada—United States of America—Clearing Houses—Discount Companies—Savings Banks—Agricultural and People's Banks—Foreign and Colonial Banks.

INTRODUCTORY

Although the business of banking at the present day is somewhat more complex than formerly, its fundamental principles remain essentially the same, viz.: borrowing and lending—not money's worth—not goods—but money in some shape or form. The other branches of banking, including the issue of bank notes, are really incidental and subordinate to the twofold function above mentioned.

The actual business of banking, although somewhat hampered and restricted in its earlier days, has been singularly free from legislative enactment during the past seventy years. So much so is this the case that the word "Bank" is now in danger of abuse through its adoption by individuals and institutions who have little if any claim to the use of the term.

Classes of Banks

The various banking institutions of the United Kingdom may be classed as under:—

1. The Bank of England;
2. Banks constituted by Royal Charter, and by special Acts of Parliament;
3. Individuals and private firms consisting of not more than ten members;
4. Registered banking companies, i.e. companies registered under the Companies Acts, and consisting of more than six persons;
5. Foreign and Colonial Banks, having a London office.

Banks may be further subdivided into Banks of Issue, and Deposit Banks, although the general business transacted by both is identical. In the earlier days of banking considerable value was attached to the note issue, but this is now looked upon as of minor importance, and is yearly becoming less so, owing to the rapid decline in the number of English banks of issue through their being absorbed by the bigger banks.

Annual Returns

As matters stand at present any individual or any number of persons not exceeding six may carry on banking in the United Kingdom without let or hindrance. The only condition attached thereto is that such person or persons require within the first sixteen days of January in each year to supply the Commissioners of Inland Revenue with a return of their names, residences, and occupations, along with the name or style of the firm, and the place where the business of banking is carried on. The Commissioners on or before 1st March thereafter publish a copy of this return in some newspaper circulating in each town or county respectively. No statement of affairs or balance sheet of a private bank need be prepared or published, nor is any specific amount of capital required.

Any number of persons *exceeding six* may form themselves into an incorporated company for the purpose of carrying on banking, either with limited or unlimited liability, by registering a memorandum of association under the Companies (Consolidation) Act, 1908. No company consisting of more than ten persons can legally carry on banking business unless so registered, or in pursuance of a special Act of Parliament, or of Letters Patent.

All the great joint-stock banks now carrying on business in this country may be said to be registered under the older Companies Acts.

From each registered joint-stock bank returns must be made to the Registrar as follows: Every company having a capital divided into shares must within fourteen days after its annual general meeting make out a list of the names, addresses, and occupations of its shareholders, the number of shares held by each of them, and a summary containing certain specified particulars. This list must state the names not only of the present shareholders, but also of all members whose names appeared on the register as at the date of the last return. The return must be in the form shown in the Schedule to the Act, and must be completed within seven days, and a copy forwarded to the Registrar of Joint-stock Companies. Section 108 of the Companies (Consolidation) Act provides that on the first Monday in February and the first Tuesday in August of each year a statement shall be prepared by each banking company of its assets and liabilities. A copy of this statement must be put up in a conspicuous place in the head office, and in every branch office or place where business of the bank is carried on. A penalty of £5 per day is incurred for any default in this respect.

It is further provided that a balance sheet, certified by the auditor or auditors, shall be submitted at the annual or other meeting of every banking company registered after the passing of this Act as a limited company. This balance sheet must be certified by the signature of two directors of the company, and it should also have the auditor's report subjoined or a reference made thereto.

Issue of Notes

When the Bank Act of 1844 was passed there were in England 72 joint-stock banks of issue and 207 private banks of issue, with an aggregate authorized circulation of £8,631,647. There now remain 8 joint-stock banks and 10 private banks, whose total authorized circulation amounts to £669,480. It will thus be observed that so far as England is concerned the note circulation of the country banks has dwindled to a very moderate sum.

New banks of issue were prohibited by the Bank Act of 1844 and by the Act of the following year applicable to Scotland and Ireland. Under the provisions of the former statute, each English provincial bank issuing notes at that time had a fixed authorized circulation allotted to it, based on its average actual issue of notes for the twelve weeks prior to the passing of the Act. Its note issue is strictly limited to the amount then specified and cannot be increased, the only bank in England entitled to issue notes against coin being the Bank of England. In Scotland and Ireland the position is very different, as the banks in these countries may issue notes over and above their authorized circulation to any amount, provided the excess beyond this circulation is covered by gold and silver coin deposited at certain registered offices, the quantity of silver not to exceed one-fourth of the gold coin.

The Bank of England alone has the right to issue notes without taking out a licence, and without payment of any stamp duty. All other banks issuing notes must obtain a licence from the Inland Revenue authorities and execute a bond to secure payment of the composition for stamp duties which otherwise would be payable on the notes issued. A separate licence costing £30 has to be taken for each town or place in which a bank issues notes, but bankers who were at the date of the Act issuing notes at more than four places may continue to issue notes at these places with four licences only; a new licence must, however, be taken out for each new place of issue. This regulation applies to England and Scotland only, as Irish bankers need not take out more than four licences in all. The composition in lieu of stamp duty is payable twice a year—in January and in July—at the rate for England of 3*s.* 6*d.* for each £100 in circulation. The composition in Ireland is at the same rate, but in Scotland the rate is 4*s.* 2*d.* half-yearly for every £100 in circulation. The manner in which this composition is calculated is as under:—

Every banker issuing notes has to send in weekly accounts showing the amount in circulation, and at the end of each successive period of four weeks the average for such period must be stated.

As will be seen from the following figures the banks in Scotland and Ireland have maintained their circulation privileges to a much greater extent than those of England, the position being to-day as follows:—

	Authorized Issue.	For 4 Weeks ending 2nd Sept., 1911 Average Circulation
6 Irish Banks ...	£6,354,494	£7,016,301
8 Scotch Banks ...	2,676,350	7,005,980
	£9,030,844	£14,022,281
England—		
8 Joint Stock Banks ...	£245,731	£77,993
10 Private Banks	423,749	74,951
	£669,480	£152,944

Deposit Banking

While the provincial note issues of the country have thus become stationary or retrograde, ordinary deposit banking is in an altogether different position. Although the Bank Act of 1844 prohibited fresh banks of issue, it imposed no restriction on the non-issuing banks; nor on the formation of new companies; nor on institutions which were prepared to surrender their right to issue notes if carrying on business within 65 miles of London. The days of deposit banking proper may be said to date back to the passing of the Act of 1826, and the position and relative standing of our banks to-day may be largely measured by the amount of their deposits.

Subjoined is a note of the deposits of the ten largest English banks, as shown by their latest balance sheets:—

	Deposits
Bank of England	£55,987,708
London County and Westminster	78,151,229
Lloyds	78,116,468
London City and Midland ..	73,773,541
National Provincial	65,142,782
Barclay & Co.	48,881,845
Union of London and Smiths ..	40,866,247
Parrs	38,950,207
Capital and Counties	37,327,965
London Joint Stock	33,612,502

PRACTICE OF BANKING

As already explained, the chief functions of modern banking are to receive moneys on deposit and to make cash advances to customers and others, either by the discounting of bills or by the granting of loans. Deposits received are placed either on current account to be drawn upon by cheques, or on a deposit account bearing interest. Such deposits need not, however, be placed upon an account at all, but upon deposit receipt, this being the customary procedure in Scotland. In the absence of any special agreement, all deposits are repayable on demand, although in London and in certain parts of the provinces one to seven days' notice of payment is required. While interest is allowed on all deposits, a banker may make special terms with his customer in regard to the rate to be afforded, the period during which the deposit is to remain, and the length of notice for withdrawal. As a rule the rate of interest allowed by the leading banks for deposits at call is about 1½ per cent below the Bank of England minimum discount rate, but when the latter is exceptionally low the difference may be 1 per cent. Certain so-called banks offer much higher rates, but institutions of this kind should be avoided. It is not customary for London banks to allow interest on operative current accounts, but as against this numerous and various duties are undertaken without any charge being made. (See also Chapter III of this Part.) Many English provincial banks, however, continue to allow interest at a fixed rate on the minimum credit balance maintained during each month.

The deposit receipt almost invariably requires to be produced when payment is wanted of any portion of the principal or interest, but the practice of the banks in this respect is not entirely uniform. When a deposit receipt has been mislaid, lost, or stolen the banker should at once be notified, although in the event of payment to the wrong person the banker would be liable, as he is bound to make himself familiar with the signature of his customer. When a reasonable interval has elapsed after its loss a fresh receipt is granted upon an indemnity being given by the depositor.

Considerable difference in practice prevails in regard to the writing up of pass books and the comparing and delivery of the customer's paid cheques. In London all cheques paid are delivered up to the customer whenever the pass book is handed over after being written up, the intention being to afford the customer an early opportunity of comparing and verifying these cheques. In Scotland paid cheques are returned once a year, the customer being then asked to certify the accuracy of the whole account.

Should a cheque book be lost the owner ought to notify the bank immediately to that effect. Where it is intended that another person should be allowed to draw cheques on a bank account, written authority must be given to the bank, or a formal power of attorney executed by the customer. Such authority will remain in force until withdrawn, but lapses in case of the death or bankruptcy of the grantor, or in the event of his mental incapacity. The document of authority must be explicit in its terms, and it does not warrant overdrafts on any account unless this intention be clearly specified.

Owing to the risk involved no prudent banker will care to open an account for a very young person, nor can an account be opened in the name of a lunatic or person of unsound mind.

If required, the banker will collect for his customers any cheques or documents payable in other towns or countries, which may be handed in for that purpose. In most cases cash is given at once, but, whether or not, the banker is entitled to

recover the amount from his customer should the cheque not be paid when presented. The banker must of course use all necessary expedition in the performance of such duties, as, if any negligence or carelessness be proved, he may be held responsible.

Lending by Bankers

Although the bulk of a bank's deposits are payable on demand, experience has shown that under ordinary conditions only a certain proportion will actually be called for, so that the bank is at liberty to devote part of these funds towards the granting of cash advances to customers and others. In proportion as this is judiciously and safely accomplished will be the amount of actual profit to the bank.

A common method of borrowing from a bank is by means of bill. This in a sense differs from the granting of a loan, inasmuch as the banker acquires the right to demand payment from the parties to the bill other than his own customer.

Bills are usually regarded by bankers as divisible into three classes, viz.: (1) Bills which bear the acceptance of a London Bank, or accredited financial house, and which may be described as remittance or bank paper; (2) ordinary trade bills, drawn for value by a merchant or manufacturer on his customers; and (3) accommodation or finance bills which are not based on ordinary business transactions but are for the benefit of the parties or any one of them.

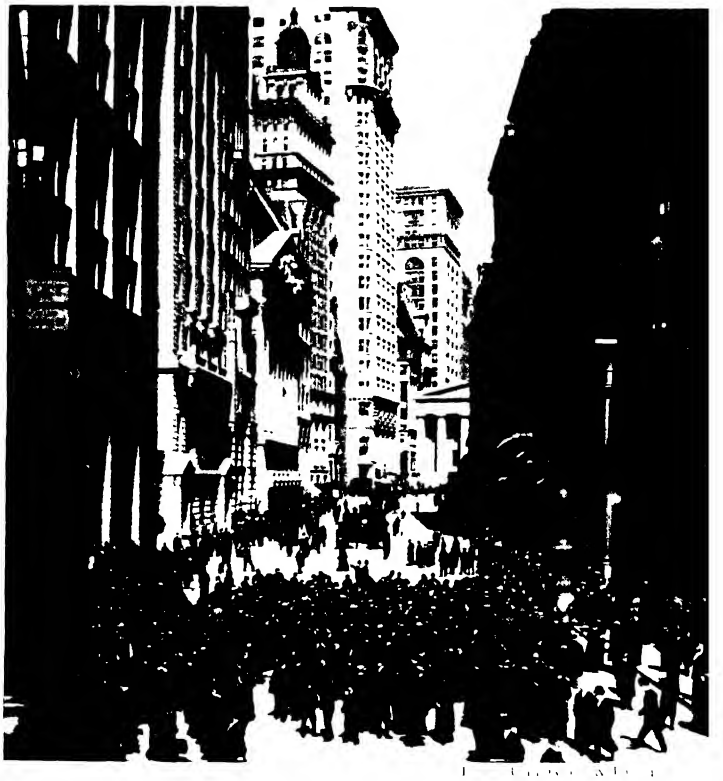
When a bill is presented for discount the banker does not merely satisfy himself that the document is in proper form, and that the parties to the bill are able to meet their obligation at maturity, but also as to the expediency of making the advance at all. If the transaction be looked upon as satisfactory the banker will discount the bill, i.e. he will credit its amount to the customer's account, less the sum charged as discount. If, on the other hand, he has any doubt as to the sufficiency of the parties, he may either decline the business altogether or retain the bill for collection at its maturity, and in the meantime may advance a small portion of the amount to the holder. It will be observed that in the case of bills discounted in this way the interest or discount is actually prepaid. The responsibility for the negotiation of the bill, i.e. its presentation for payment in due course on the day of maturity, devolves upon the banker, and, if the bill be not met on its due date, notice of dishonour must be sent by him to all the parties liable on it. When a bill is not duly met, the holder is entitled to have it noted and protested, but this question is fully discussed in Part III, Chapter VII. In Scotland the holder of a bill has the right of what is termed *summary diligence*, and the recording of a protest in the books of the Court there, followed by a demand for payment (if not complied with), renders the grantor "notour bankrupt". Bankers are inclined to look somewhat askance at bills having a longer currency than six months, and generally decline to discount bills drawn at twelve months' date or longer. The main reason for this is that they do not care to have their funds "tied up" for so long a period.

The class of documents designated "accommodation" or "finance" bills are in an altogether different category, and bills of this kind invariably receive the utmost scrutiny when tendered for discount. The banker will usually want to know in such cases the purpose for which the money is required, and the source from which repayment is to be effected. Accommodation bills not retired at maturity have a tendency to run on for a considerable length of time, and it may be accepted as a banking axiom that the longer the bill remains in circulation the greater will be the difficulty in obtaining repayment.

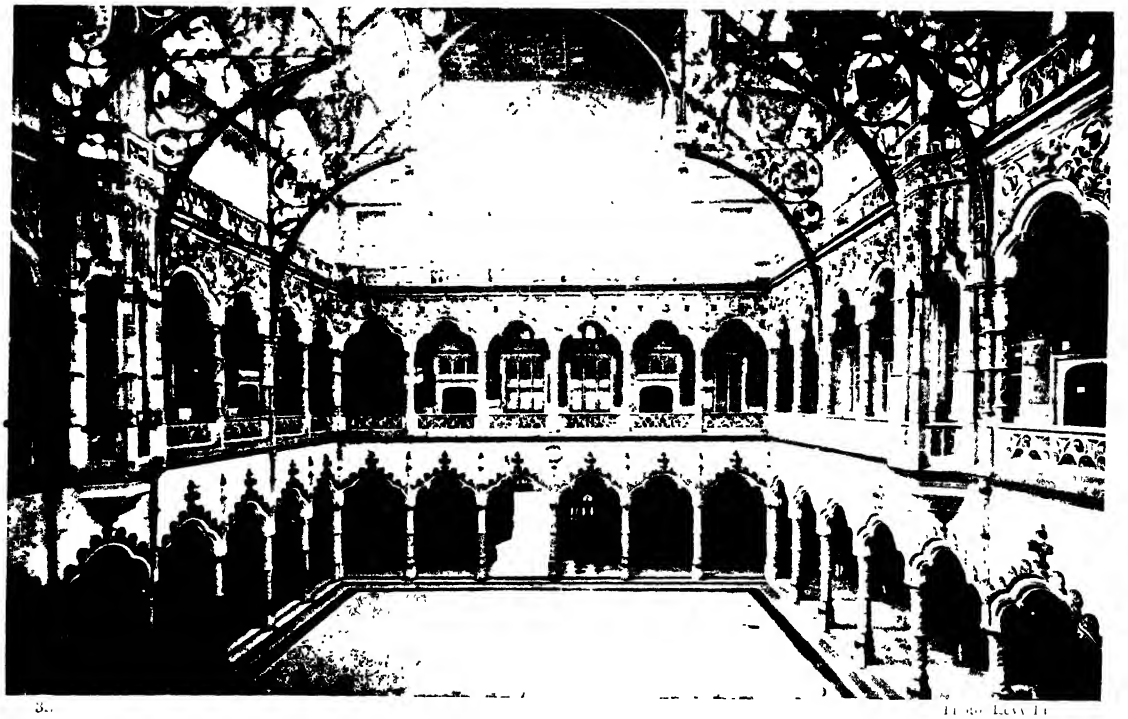
Advances on promissory note are virtually loan transactions, except for the fact that the bank may require the names of one or two friends in addition to that of its own customer. Where a promissory note purports to be made "jointly and severally", each of the parties is liable for the full sum in the bill. A promissory note is sometimes taken merely as a document of indebtedness, separate security being pledged against same.

The bulk of a bank's advances nowadays, however, are usually in the shape of loans against stock-exchange and other securities, or on personal obligations, &c., and the banker himself decides to what extent he may safely make advances in this way. In the case of first-class stock-exchange securities the banker may be called upon to lend money without much, if any, previous notice. A sufficient margin of value in excess of the loan requires to be maintained by the customer, failing which the bank may exercise its rights and realize the stocks. Where stock-exchange securities are pledged, the customer is asked to transfer these into the name of the bank or its nominees, and to sign a letter of agreement, undertaking to maintain a certain specified margin of value, and giving the banker power at the same time to sell at his pleasure. For "bearer" securities the letter of agreement only is requisite. It may be mentioned that apart from any such agreement the bank has what is termed a lien or right of retention over such securities, unless these were specially pledged for, or devoted to, some other purpose.

Advances may also be made under a guarantee



THE STOCK EXCHANGE, NEW YORK



THE BOURSE, ANTWERP

letter, or on a cash credit bond. The latter is a favourite form of security in the north, and may be regarded as one of the more distinctive features of, and one which has led to the pre-eminence of, Scotch banking. A guarantee letter is an obligation in writing for the repayment of moneys advanced, and may be for a specific amount, or for whatever sum may at any time become due, the only limitation being in regard to the extent to which its grantor is eventually liable.

A cash-credit bond in Scotland is in many respects identical, except for the bond obligation. In the event of non-payment, this bond obligation, if recorded in the Books of Court, becomes as effective as an ordinary completed judgment, and will enable the holder to execute diligence against all the parties who may be obligants thereon.

Another class of security frequently tendered is that of policies of life insurance. Many people are under the impression that a life policy represents a very valuable asset, whereas in some respects it may be looked upon rather as a liability, owing to the absolute necessity of having the premiums kept regularly paid up. In any case it may be taken for granted that the banker will not advance beyond the extent of the surrender value of the policy, this surrender value being roughly estimated at one-third of the total amount of the premiums paid.

Bankers may at times be induced to make advances on bills of lading or other shipping documents, but these, although transferable by simple endorsement, are subject to many objections, and are regarded by bankers as by no means an ideal security.

Shipping property itself may also be the subject of loans, either by bill of sale or on mortgage. Where a bill of sale is given, the banker becomes owner of the vessel with all its attendant risks, and the form of security preferred is usually that of a mortgage. (See Part VI.)

Advances may also be made against goods, or "corporeal moveables" as they are termed in Scotland. In all such cases the right of property in the articles must unquestionably pass to the banker, who will not only satisfy himself as to this, but also ascertain that the holder of the goods has no right of retention, unless for warehouse rent. The goods must be in the hands of a trustworthy neutral custodier, and must not remain in possession, or under the control, of the borrower. It will also be advisable to have the goods insured against fire, and the borrower must bear the cost of same.

The last and the least acceptable class of security offered to bankers to which we need refer is that of real estate, heritable property, land, or public works. It is unfortunate this should be so, but lands, houses, and buildings in this country have the invariable peculiarity of proving a most unsaleable item when the necessity for this arises. The prudent banker will therefore not grant advances to any extent against this class of security alone.

Cases may arise where a banker may consider himself warranted in affording advances without any security, and these take the form of overdrafts. For such the highest rates are charged, so that a substantial customer will seldom find it advantageous to borrow in this form. Where any agreement or course of practice exists between the banker and his customer, the former is not at liberty, unless after reasonable notice, to dishonour the cheques of his customer, even their payment would create an overdraft.

As a rule, about fifty per cent of a bank's funds is employed in making advances to customers and others. About fifteen per cent of the general funds consists of cash on hand or at the Bank of England, while twenty per cent may be invested in Government and high-class securities, which ought to be of a readily realizable nature for use in case of need, and about twelve to fifteen per cent may be lent out to London bill brokers and stockbrokers on loans at call and short notice, money advanced in this way being readily available for meeting any large payments which have to be made.

Incidental Duties of Bankers

When it is desired to transfer or remit money from one part of the country to another, this can be best effected by purchasing a draft from the banker or instructing him to make the necessary payment, the charge in either case being comparatively nominal. Bankers also supply their customers with circular letters of credit and circular notes which enable money to be drawn when travelling abroad. (See also Chapter III of this Part.) Such letters of credit are accompanied by a "letter of indication", and this should be at once signed by the purchaser in order to prevent fraud should the documents fall into the hands of any dishonest person. For the same reason, it is important that the letter of indication and letter of credit be kept apart from each other.

A banker is also prepared to grant a letter of indemnity on behalf of a customer should this be needed in any special circumstances, such as the case of a lost certificate or dividend warrant, &c. In these cases the bank takes from its customer a letter requesting that such indemnity be granted, with an undertaking to free and relieve the bank

from claims in respect thereof. As a rule, however, bankers are disinclined to furnish guarantees of this kind unless for a specified period and amount.

Where a customer desires to invest money, the banker will usually be disposed to undertake this on his behalf, provided definite instructions in writing are given. Sales of stocks or shares may also be effected for customers, but in all such cases a limit of price ought to be furnished. Bankers, as a rule, however, do not care to advise their customers regarding investments. When a new company is offered to the public for subscription an important duty arises, viz. that of receiving application moneys. This is attended to by the company's bankers, a fee being charged for work of this kind.

THE BANK OF ENGLAND

This institution, of which we may reasonably feel proud, was formed in April, 1694, and the original capital, £1,200,000, has been added to from time to time until it now stands at £14,553,000. Such increases of capital, it may be explained, were mostly for the purpose of advancing moneys to the Government. The administration of the bank in its main features is still regulated by the famous Bank Act of 1844, and is continued without any material alteration at the present day. The leading provisions of that Act may be stated as under:—

1. The Note Issue Department and the Ordinary Banking Department are to be kept entirely separate. When this separation was made in 1844, securities of £14,000,000, which included the debt due to the bank from the Government, were transferred to the Issue Department, along with gold coin and bullion sufficient to make up the total of the notes then outstanding.

2. The Issue Department is not entitled at any time to hold in silver coin more than one-fourth part of the gold held.

3. When any country banker relinquishes his right of issue, the Bank of England may issue additional notes against securities to the extent of two-thirds of the issue so relinquished, but all profits of this increased circulation belong to the Crown.

4. A Statement of the Issue Department and also of the Banking Department must be published weekly in a prescribed form.

5. Notes may be demanded from the Issue Department in exchange for gold at the rate of £3, 17*s.* 9*d.* per standard ounce.

The wisdom of these provisions has frequently been questioned, but the Act as a whole has admittedly worked well, and, notwithstanding gradual changes in business customs and procedure, it has served to maintain our banking system in a sound condition. In the review which follows of the position of banking in various foreign countries it will be found that one of the principal points aimed at is to provide elasticity, or room for expansion, of note issues in times of need. Nothing of the kind exists in this country, as the Bank of England is not allowed to increase its issue of notes beyond the prescribed limit of £14,000,000, unless against coin or bullion, or against securities to the extent of two-thirds of the note issue of other banks which have permanently retired. When circumstances arise which necessitate any further issue of notes, this privilege can only be obtained by the consent of the Government of the day, and subsequent confirmation thereof by Parliament. The Bank Act of 1844 has been suspended in this way on three occasions only, viz. 1847, 1857, and 1866.

To form an intelligent idea of the money market it is necessary to understand the weekly return issued by the Bank of England, and to appreciate properly the significance of its various items. In accordance with the requirements of the Act of 1844, this return is made up by the bank as at the close of business each Wednesday, and is published the following day. The figures in these returns invariably attract attention, but it is only in times of monetary trouble or stress that any real interest is manifested in them by bankers or the general public. (See also Chapter IV of this Part.)

The actual amount of notes issued since the passing of the Act has increased by about £26,000,000, but the active circulation by some £9,000,000 only. The active circulation represents the notes actually in the hands of the public, and is arrived at by deducting the notes held in the Banking Department from the total notes issued by the Issue Department. On the credit side of the Issue Department the "Government Debt" stands at the same figure as at the passing of the Act in 1844. "Other Securities" have risen by £4,450,000 through the absorption of lapsed issues of country banks. The remaining item, "Gold and Bullion", fluctuates, of course, with the amount of notes issued. Mr. Shaker compares it to an automatic machine, in respect that as you put in gold you take out notes, or you put in notes and gold comes out. The Issue Department is compelled to issue notes in exchange for sovereigns, and for gold bullion at the rate of £3, 17*s.* 9*d.* per ounce, as already men-

tioned. Although the Bank must give five sovereigns for every £5 note presented, it is at liberty to charge any price it likes for bullion, so that if the demand is pressing the price may be increased to £3, 17*s.* 11*d*. Beyond this figure it appears the price cannot be effectively raised, for sovereigns would in that event be withdrawn and melted down.

Under the Banking Department the first item, "Proprietors' Capital", represents the amount on which dividends are paid. The sum is much in excess of that of any other bank in England, and it has stood at its present figure since 1816. "Rest Account" consists of accumulated undivided profits, and stands to-day at about the same figure as in 1844. It is never reduced below £3,000,000, the excess beyond that sum being paid away half-yearly in dividends. The Bank has also a valuable asset in its city premises, although no value is placed on these in the balance sheet.

"Deposits" are subdivided under two heads, viz. "Public Deposits" and "Other Deposits". The former includes balances on account of the Exchequer, Post Office Savings Banks, Commissioners of National Debt, and Paymaster-General. The amount under the head of "Public Deposits" fluctuates considerably, and such fluctuations at certain seasons of the year have an important effect on the Money Market, inasmuch as rates of discount are to some extent governed by the accumulation of such deposits on Government account. The difference between the maximum and minimum total in recent years has varied between £10,000,000 and £15,000,000, the highest point under normal conditions being reached about the end of March. "Other Deposits" include balances at the credit of banks and private customers, and, so far as deposits of ordinary customers are concerned, the amount fluctuates and falls away as in the case of other banks. The balances kept by bankers are not subject to the same variation. Every Clearing Bank must keep an account with the Bank of England, and most of the other London banks, as well as many in the country, also keep accounts. Up to the year 1877 "Bankers' Balances" appeared as a separate item in the weekly return; but the practice was then discontinued, and no such distinction is now made. It seems that recent discussion as to the advisability of coin reserves being held by a central bank (apart from the Bank of England) has at least resulted in somewhat larger balances being held by the bankers themselves in actual cash, while along with this there is believed to have been an expansion also in the balances kept at the Bank of England. Under ordinary circumstances the general state of the money market may be pretty fairly judged by the amount appearing as "Other Deposits" in the weekly bank return. If much above the average it may be taken that there is no scarcity of money; while, conversely, if other deposits fall below the average, money is in demand and rates are likely to increase. The average amount above or below which stringency or ease sets in is £42,000,000.

The liabilities already mentioned are secured by various forms of assets, the most serviceable being the "gold and silver coin", although mentioned last in the account. The item "Government Securities", which takes first place, comprises all securities guaranteed by the British Government, including temporary advances on Exchequer Bills and Treasury Bills, the latter being required towards the end of each quarter. Under "Other Securities" are included all the other investments of the bank, including loans to customers, bills current under discount, and advances to bill brokers. The item "Notes, Gold and Silver Coin" forms what is known as the bank's own reserve, and is the item in the return to which the greatest attention is usually directed.

It may be pointed out that the average proportion of cash and Bank of England balances to liabilities to the public held by the leading joint-stock banks is about 15 per cent, while the average amount of cash held by the Bank of England in proportion to its liabilities has usually approximated to about 50 per cent during the past ten years. The importance of maintaining the reserve at such a high figure arises from the fact that home demands, as well as those from abroad, have to be provided for. The former follow a somewhat regular course, but the demands from abroad are in most cases wholly uncertain, and it is in respect of these that the frequent changes arise in the Bank of England discount rate.

SCOTLAND

Within a year after the establishment of the Bank of England, the Scots Parliament passed an Act instituting the Bank of Scotland. The projector of the enterprise was John Holland, a merchant of London, who, observing the success which had attended the formation of the Bank of England, got eleven Scots merchants to join with him, and in 1695 the company thus formed obtained from the Crown a charter of incorporation. It is an interesting fact that the Bank of Scotland is

really the first instance on record of a company being formed to carry on the business of banking upon its own subscribed capital and without any State assistance or support. Twenty-one years later the monopoly which had been granted to the Bank of Scotland expired, but no steps were taken to renew it. In 1727 the proprietors of a fund called the Equivalent Company were made a corporation, entitled The Royal Bank of Scotland. Another rival appeared in 1746 in the British Linen Company, which eventually found it expedient to discontinue the linen branch of its business, and to confine itself to banking. No new banking companies were formed thereafter until 1770, but from that time onwards twenty-nine private banks commenced business, and of these twenty-five subsequently failed or discontinued operations. All private banks ceased to exist previous to 1845. Thirty-nine joint-stock banks in all were established in addition to the three first mentioned, and of these twelve were incorporated with other banks, while eleven suspended payment or were wound up. Of those which failed only two did not pay their creditors in full, and at the date of their stoppage had respectively only nine and three partners. Of the nineteen joint-stock banks which remained in 1845 two have failed, the Western and the City of Glasgow, and nine have amalgamated with other institutions.

Distinctive Scottish Features

The distinctive features of the Scottish banking system, to which reference may be made, are:—

1. The small number of very large banks with numerous branches;
2. The system of loans upon cash-credit accounts; and
3. The issue of one-pound notes.

To these may be added the fact that no charge is made in Scotland for the keeping of bank accounts, although small commissions are exacted for the cashing of documents payable in other towns and for remittance of moneys to other places. Perhaps the most striking feature of Scottish banking consists in the extremely small number of banking institutions and the constantly increasing number of their branches. In 1848 there were 391 branches in all; in 1878 there were 940 branches in existence; and from the latest published returns the number of separate banks is now eight, with over 1200 branches. The tendency both before and since the passing of the Bank Act of 1845 has been for private and smaller banks to become incorporated with larger institutions, and this movement set in at a very much earlier period in Scotland than in England. The most recent amalgamations are those of the Caledonian Bank with the Bank of Scotland in 1907, and the Town and County with the North of Scotland in 1908, both of which unions have resulted successfully.

For many years the Scottish banks were represented in London by recognized agents, until in 1864 the National Bank of Scotland opened an office in London for the transaction of banking business. The Bank of Scotland followed suit six years later, and to-day all the Scottish banks have London offices, except the North of Scotland and Town and County Bank.

Scottish banking, even in troublesome times, has throughout occasioned little reason for unfavourable comment, but there are three events which stand out prominently in its history, viz. the failures of the Ayr Bank, of the Western Bank, and of the City of Glasgow Bank.

The Ayr Bank, which failed in 1772, was a highly respectable concern, founded on behalf of the landed interest, and although taken advantage of by self-seeking individuals, there was probably more of incapacity about its administration than of actual dishonesty. Its suspension involved a deficiency of £663,396 to be made good by the partners, 225 in number.

The Western Bank, although without any aristocratic connection, was for a time of sound commercial standing, but "the extent of its infatuation was culpable to a degree almost requiring the plea of insanity to justify it". In spite of this, however, its officials did not actually descend to dishonest or criminal acts. The shortage brought out on the failure of the Western Bank amounted to over two millions.

The City of Glasgow Bank, on the other hand, for many years was kept alive by means of a long-continued system of frauds which were rendered less apparent owing to the respectability of its neighbours and the unlimited liability of its shareholders. The City of Glasgow Bank stopped payment on 2 October, 1878, with a deficit of £5,190,000. Calls of £550 and £2250 on each £100 of stock were made which yielded £5,314,518, and this with £5,851,657 realized from the assets enabled the creditors to be paid in full about July, 1880. Nothing was ever returned to the stockholders. The directors were subsequently prosecuted and sentenced.

It must be kept in view that the large number of branch banks opened in Scotland would not be possible but for the privileges enjoyed in the shape of note circulation. Under present conditions a branch can be carried on with little actual cash, as the till money consists chiefly of the bank's own notes which, while they remain in the hands of the bank, are not subject to any charge for stamp duty.

The cash-credit system, to which frequent reference has been made, was at one time predominant throughout the country, but advances in this form are by no means so numerous as formerly, and banking practice in Scotland is becoming assimilated in great measure to that of the South.

The following summary of the present position of the Scottish banks may be of interest:—

Instituted.	Name of Bank.	Number of Branches	Number of Shareholders.	Capital and Reserves	Deposits.	Note Circulation.
1695	Bank of Scotland	165	3,801	£2,575,000	£17,648,362	£1,172,060
1727	Royal Bank of Scotland	163	3,575	3,013,565	14,455,195	994,036
1746	British Linen Bank	146	3,430	2,950,000	12,118,183	737,170
1810	Commercial Bank of Scotland, Ltd.	169	4,767	Pension Reserve Fund, £100,000 £1,900,000	14,861,356	994,620
1825	National Bank of Scotland, Ltd. .	123	3,177	Pension Reserve Fund, £110,000 £1,950,000	16,413,349	859,030
1830	Union Bank of Scotland, Ltd. . .	162	3,131	2,000,000	12,586,538	883,747
1838	Clydesdale Bank, Ltd.	147	2,914	2,000,000	12,492,327	823,963
1836	North of Scotland and Town and County Bank, Ltd. . .	147	5,303	1,069,500	7,274,501	755,579
	Total . . .	1222	30,098	£17,458,065 Pension Res., £210,000	£107,849,811	£7,220,205

IRELAND

The earliest available references to Irish banking are to be found in the Acts of the Irish Parliament, which seems to have taken a lively interest in money matters in general and to have legislated on the subject from a very early period indeed. The goldsmiths, who in Ireland as elsewhere were the pioneers of banking business, were superseded early in the eighteenth century by ordinary private bankers. Some of these were very respectable firms with somewhat large businesses, but the opening period of Irish banking in the main has been well described as "a record of runs, failures, and windings up". The private bankers of Ireland possessed unlimited power to issue notes, and this privilege was grossly abused, with inevitably disastrous results. Banking was then a pursuit open to all, and was not confined to persons of high social standing or of undoubted resources.

The only private bankers now shown in the Bankers' Almanac are Boyle, Low, Murray & Co., who act as notaries and stockbrokers, and Guiness, Mahon & Co., who are also land agents.

The Bank of Ireland was established in 1782 by an Act of Parliament which contained provisions similar to those under which the Bank of England was founded. The capital was £500,000, which was to be lent to the Government at 4 per cent. Not more than 5 per cent interest was to be charged on loans, and the bank was not to engage in any other business than that of banking as defined in its charter. The original charter, granted 15 May, 1783, contained virtually a monopoly of joint-stock banking by means of note issues, inasmuch as it restricted the constitution of all other banks of issue to six persons only. This restriction existed till 1821, when the bank, in return for permission to increase its capital, thought fit to abandon the monopoly it had hitherto enjoyed. It now possesses no exclusive privileges further than that it keeps the Government accounts and its notes are legal tender in Ireland.

The Bank of Ireland did not at its outset, nor for forty years afterwards, attempt to establish country branches, and when it did so the object apparently aimed at was not the benefit of the community but the discouragement and suppression of its competitors. The Provincial Bank eventually fought the Bank of Ireland on the question of opening country offices, and to this rivalry is due in great measure the past progress and present freedom of banking in that country.

Until 1864 no interest was paid to depositors, but in that year the Bank of Ireland agreed to allow interest, thus assimilating its practice to that of its rivals. No statement of accounts was formerly published, but its annual report is now pretty much on the lines of those of the other banks.

The other banks of issue now in existence are five in number, viz.:—

Provincial, Belfast, Northern, Ulster, and National. Those more recently instituted, which do not issue notes, are the Hibernian, Munster and Leinster, and Royal Banks.

Note Issue

The issue of notes is regulated by the Irish Bank

Act of 1845, which placed all banks on the same footing in that respect. New banks of issue were forbidden under the Act, and an authorized circulation was fixed for each bank then in existence and issuing notes.

In the event of the authorized circulation being exceeded the excess requires to be covered by gold or silver coin, of which not more than one-fifth may be in silver. The provisions in regard to the amalgamation of two banks of issue are similar to those applicable to Scotland, but any bank desirous of abandoning its right of issue may compound for the disposal of same to the Bank of Ireland, and that bank is at liberty thereafter to increase its authorized circulation to the extent of that of the retiring bank. No right of issue once lapsed can be revived.

Returns of circulation are similar to those of Scotland, with the following important exceptions: (*a*) instead of the coin against the excess circulation being held at one registered office only, it is competent to hold such coin at the head office or at four principal places of issue in Ireland, not more than two being in the same province; (*b*) instead of being payable at the head offices alone, as in the case of English and Scottish notes, cash may be demanded in Ireland at any of the branches where notes are issued or reissued, which practically includes all the branches; (*c*) the Irish banks have a distinct advantage over their neighbours in Scotland inasmuch as they have to take out four licences only, their first three offices being covered by three licences, while a fourth licence is sufficient for all the remaining branches. The composition duty on the note issues in Ireland is fixed at 3*s.* 6*d.* per £100 for the half-year as already mentioned.

Irish banks are therefore obliged to keep somewhat larger stocks of gold, and this involves considerable loss of interest, as the gold at the minor branches is not reckoned as forming part of the security against the circulation in excess of the authorized issue. The effect of this is that the Irish note circulation nowadays is often under the authorized issue, with the result that some banks do not require to keep any gold at all to satisfy the requirements of the 1845 Act.

Bank notes are rather more popular in Ireland than in England, but are by no means so much so as in Scotland. One remarkable feature is that while in Scotland there is a very large number of notes under £5 in circulation, the reverse is the case in Ireland. Indeed small notes constitute little more than one-third of the total note issues of Ireland as against a proportion of over two-thirds in Scotland.

General Conditions

As mentioned on p. 208, the total authorized circulation of the six banks of issue in Ireland is now £6,350,000, and the average circulation is frequently within that figure, while the coin held usually exceeds £3,000,000. The banks of issue, with the exception of the Bank of Ireland itself, are all registered as limited companies and are therefore subject to the provisions of the Companies Acts, including that of 1879 under which the liability of the partners in respect of the note circulation is unlimited.

An outstanding feature of banking in Ireland is the discounting of bills for very small amounts, these bills, which range in many cases from £2 to £20, being secured by several names. Although the parties enjoying such facilities are in humble circumstances it is understood that the losses sustained through such transactions are inconsiderable.

The number of branch banks in Ireland according to latest returns is 814, of which no fewer than 306 consist of sub-branches and agencies which are only open on certain days of the week.

Subjoined is a statement of the position of the banks of Ireland at the present day:—

Instituted.	Name of Bank.	Number of Branches.	Number of Shareholders.	Capital and Reserves.	Deposits.	Note Circulation.
1783	Bank of Ireland	99	—	£3,805,230	£18,866,150	£3,160,000
1824	Northern Banking Co., Ltd. ...	100	—	805,000	5,674,976	676,000
1825	Provincial Bank of Ireland, Ltd....	84	3297	905,000	6,453,648	756,000
1825	Hibernian Bank, Ltd.	77	2000	700,000	3,798,028	*Nil*
1827	Belfast Banking Co., Ltd. ...	77	2833	991,858	5,692,655	617,000
1835	National Bank, Ltd. ...	120 Ireland 15 England	7000	2,085,000	13,160,901	1,363,000
1836	Ulster Bank, Ltd....	163	7139	1,200,000	8,567,214	1,187,000
1836	Royal Bank of Ireland, Ltd. ...	11	1700	505,000	1,898,446	*Nil*
1885	Munster and Leinster Bank, Ltd.	82	2000	530,000	5,558,974	*Nil*
		828	—	£11,527,088	£69,670,992	£7,759,000

FRANCE

It is said that to John Law of Lauriston, the famous Scotsman, belongs the credit of having established in 1716 the first bank of issue in France. Its career, however, was short-lived, as its notes were issued so lavishly that the bank was soon obliged to stop payment. A second bank, formed sixty years later, continued to exist until suppressed by the Revolutionist decree of August, 1793. Thereafter a period of unsettled government ensued until 1800, when the Bank of France was established under the auspices and patronage of Napoleon I. Looking to the successive changes of government which have taken place in that country, the fact that the Bank of France has continued not only to exist, but to become day by day stronger, is a tribute to the wisdom of its founders and the ability of its subsequent management.

The capital of the bank has been added to from time to time, and reached its present figure, 182,500,000 francs, in 1857. In 1848 a monopoly of note issue was obtained, a number of other banks which, under ancient privileges, had the right to issue paper money, being then bought up. The capital stock of the bank is wholly in the hands of private shareholders, but the Government appoints the chief officials and their immediate assistants. There are over 29,000 shareholders, so that the average holding is a small one.

The law governing note issues imposes no specific restriction as to reserves. The maximum amount of notes to be issued is fixed by law, and has been increased as business requirements developed. In 1897 it was raised to 5,800,000,000 francs—a much larger amount than is permitted in almost any other country, chiefly owing to the fact that the use of cheques in France is still very limited. The original law provided that the notes "shall be so proportioned to the reserve cash in the vaults of the bank, and with such regard for the maturing of negotiable paper held by the bank, that the bank can at no time be exposed to danger by delaying payment of its obligations when presented". France, however, is a bi-metallic country, and the bank may redeem its notes in either gold or silver. This ability to use silver at discretion obviates the necessity of frequently raising its discount rate like the Bank of England. In cases of excessive demand, all that the Bank of France does is simply to charge a heavier premium for delivery of gold. It is seldom, however, that gold can be obtained from the bank in quantities sufficient for export, and in such cases recourse is had to bullion dealers, who buy coin direct from railway companies and others at a small premium. At present the Bank of France holds not less than £100,000,000 in gold and £45,000,000 in silver, its note circulation being over £200,000,000. With so large a stock of metal, combined with the power to control same, the bank is in a position to dominate the foreign exchanges if such a policy were deemed advisable. It is, however, to the credit of the management of the Bank of France that their aim is rather that of the general welfare of the public, and on three occasions at least they have assisted the London market by supplying gold from its reserves. The Government levies a small tax on notes not actually covered by gold and silver, the amount derived from this source being about 7,000,000 francs annually.

The marked differences which exist between the constitution and operations of the Bank of France and that of England also contribute largely to the steadiness of the discount rate in the first-named country. During the twenty years from 1888 to 1907, only sixteen changes in rate have taken place. In twelve of these years no change occurred, and there was no change whatever from May, 1900, to March, 1907. Two changes took place in January, 1908, when the rate fell from 4 per cent to 3 per cent, and this rate continued until 21 September, 1911, when it was advanced to 3½ per cent, at which it remains.

The following figures in sterling show the position of the Bank of France as at 24 December, 1910:—

LIABILITIES		ASSETS	
Capital paid up	£7,300,000	Cash on hand ...	£164,519,145
Reserves and Profits ..	1,700,773	Bills	41,870,500
Notes Circulation	207,342,355	Advances	31,345,885
Current A/cs., &c.	30,088,321	Investments	8,504,473
Dividend payable	1,695,767	Buildings, &c.	1,887,213
	£248,127,216		£248,127,216

GERMANY

The reorganization of the German banking system dates from 1871, when the present German Empire was established. Prior to that date each of the various states had its own system of banking and note issues, and the consolidation of their conflicting interests and the establishment of a uniform system of currency and banking was no easy task. The adoption in July, 1873, of the gold standard was the first step towards that end; and, later on, with a view to foster the industrial and commercial development of the country, the Imperial Bank of Germany, or "Reichsbank", was established. Of the thirty-three local banks which then issued their own notes only four now remain, viz. those of Baden, Bavaria, Saxony, and Wurtemberg.

The Imperial Bank is a private joint-stock company, but the management is virtually in the hands of the Government, and the shareholders have really no voice in its policy. The capital is now 180,000,000 marks, fully paid up. The note issue is regulated in such a manner as to merit the descriptive expression "elastic limit", so frequently used in connection with discussions on bank reserves. In the first place, all five banks are permitted to issue notes on credit for the total amount of about 9 marks per head of the population, the latest amount fixed being 541,600,000 marks; (2) they may issue to the extent of the gold and silver and notes of other banks held; while (3) notes may be issued by them upon credit to any amount required by their business demands, subject to a 5-per-cent tax to the Government, calculated and payable weekly.

In the latter provision lies what we term the "elastic limit", which unquestionably provides much greater flexibility than our English system. In theory the tax above referred to affects the discount rate, as there can be no profit in issuing notes at 4½ per cent on which 5 per cent is payable. Nothwithstanding this the Reichsbank, for the convenience of the public, occasionally issues taxed notes when its discount rate is under that of the taxed rate.

In order to protect its gold reserves the bank always holds considerable sums in foreign bills of exchange, which can be used for remittance purposes in case of demands, say from London, and the purchase of these bills is so regulated that they mature gradually. One novel feature was introduced in the renewal of the Charter in 1899, its object being to assist the Reichsbank still further in protecting its reserves. Under it the other banks of issue are forbidden to discount at lower rates than the Reichsbank's when that is 4 per cent and upwards, but they may discount at a minimum of one-fourth per cent below its rate when that is under 4 per cent. It is doubtful if this provision really helps the Reichsbank, as the actual market rate for money is now chiefly influenced by the non-issuing banks, whose operations are not affected by statute.

The Reichsbank's ordinary dividend is limited to 3½ per cent. Ten per cent of the remaining profits is apportioned to Rest Account, and of the surplus beyond this, one-fourth goes to the shareholders and three-fourths to the Government.

No bills are discounted by the Reichsbank exceeding three months' currency, and the names of at least two solvent parties are required on each bill. The use of cheques in Germany for making cash payments is by no means general yet, but an endeavour has been made by legislation to extend their use.

The particulars given in the reports of the Reichsbank are not exhaustive, and the deposits of the Government are not separately stated. A summary in sterling of recent figures is subjoined:—

REICHSBANK

LIABILITIES		ASSETS	
Capital	£9,000,000	Gold and Bullion	£15,469,286
Reserve	3,488,091	Other Cash	30,731,323
Notes	274,371,826	Own Notes	170,730,445
Deposits	35,559,097	Treasury Notes	2,218,335
Sundry Liabilities	1,708,004	Bills, Loans, and other Assets	103,977,579
	£324,127,018		£324,127,018

There are in addition numerous non-issuing joint-stock banks in Germany, many of these being important and powerful institutions. Some of the more enterprising, including the Deutsche Bank, Dresdner Bank, and Direction der Disconto Gesellschaft, have offices in London.

AUSTRIA-HUNGARY

The Austro-Hungarian Bank became the successor in 1878 of the Austrian National Bank, which was founded in 1816. The monetary reform of the Empire dates from 1892, when the gold standard was adopted, the money unit being then changed from the florin or gulden to the krone or crown = 10*d.* sterling. The administration of the bank is in the hands of the Government, but a general council is elected by the shareholders, consisting of six Austrians and six Hungarians. The bank is a joint-stock company, with a capital of 210,000,000 kronen = £8,750,000; and its resources aggregate 2,800,000,000 kronen, or say £116,000,000. The active note circulation is about 2,112,000,000 kronen, while the deposits of the bank are relatively small. Since 1887 the regulations regarding note issue have been on the same lines as those of the Imperial Bank of Germany, and the bank is now authorized to issue notes—

(1) To an unlimited extent against specie;
(2) Up to 470,000,000 kronen (£19,500,000) in excess of the specie held;
(3) Beyond that sum subject to a tax of 5 per cent per annum on the excess, provided a metal reserve is maintained equal to two-fifths of the entire circulation, and that the remaining three-fifths is covered by bills or other securities. Foreign bills up to £2,500,000 may count as metal reserve.

The necessary elasticity is thus provided for, and the fact that the note tax is seldom paid, except during crop-moving seasons, shows the advantages of the plan. About 280,000,000 kronen of the coin held consists of silver, and the ratio of gold held to notes is considerably less than 50 per cent.

The Government shares in the profit of the bank, receiving one-half of the excess over a 4-per-cent dividend until shareholders receive 6 per cent. Out of any dividend over 6 per cent the Government receives two-thirds, subject to certain reserves being provided. Dividends have recently increased from about 4½ per cent to 7½ per cent. The bank grants the State a standing loan of 160,000,000 kronen (£6,660,000) free of interest during the continuance of the bank's privileges.

A distinctive feature of the Austro-Hungarian Bank's business is that of land mortgage loans, which are granted at 7 per cent, for periods up to thirty-two years, within half the value of the property. This class of business is kept separate from the ordinary banking operations, and funds are provided by 5-per-cent mortgage bonds, which the bank is authorized to issue up to an aggregate of £12,500,000. The importance of the Austro-Hungarian Bank as a Government institution is somewhat weakened by the fact that other banks are entrusted with the charge of State loans and conversions, while the Treasury itself undertakes directly certain branches of financial business.

The following figures, in kronen, are from the balance sheet of December 31, 1910:—

LIABILITIES		ASSETS	
Capital paid up	K210,000,000	Cash	K1,609,168,020
Reserve	23,530,510	Bills discounted	889,087,778
Circulation	2,375,938,120	Foreign Bills (Gold)	60,000,000
Mortgage Bonds	293,054,600	Advances	148,908,100
Current and other A/cs.	300,705,732	Investments	20,613,290
Pension Funds	12,589,678	State Debt	60,000,000
P. and L. A/c.	9,346,211	Mortgages and Sundry Assets	437,387,663
	K3,225,164,851		K3,225,164,851

RUSSIA

The Imperial Bank of Russia, which was established in 1860, may be regarded as a State bank in the strictest sense of the term. It is owned by the Empire, with capital provided by the State, and is carried on as part of the finance department. In 1894 the regulations of the bank were remodelled in order to facilitate credit and to promote the commerce and agriculture of the country. The gold standard was adopted in 1897, with the rouble equal to 2*s.* 1$\frac{5}{16}$*d.* sterling. The capital of the bank is 55,000,000 roubles (£5,500,000). The directorate consists of representatives of State departments and two elected members, the managers and their assistants being appointed by imperial decree.

Although the bank is thus a State institution, its note-issuing powers are strictly regulated by law.

The Imperial Bank of Russia may issue up to 300,000,000 roubles in excess of the gold in hand, but as a matter of fact the bank always holds gold far in excess of its note issue.

A statement of its position, in roubles, as at August, 1911, is subjoined:—

LIABILITIES		ASSETS	
Capital	R55,000,000	Cash, Bullion, Foreign Money, &c.	R1,555,440,433
Deposits, &c.	488,055,836	Securities and Short Loans	414,909,818
Circulation ...	1,279,751,719	Other Loans and Advances	162,646,769
Treasury A/c.	435,806,422	Investments	113,233,300
Miscellaneous	51,743,321	Other Assets...	32,586,164
		Branches, &c.	31,540,814
	R2,310,357,298		R2,310,357,298

FINLAND

In Finland a separate monetary system exists, the mark being equal to 1 franc. There is a central bank, owned by the Government, with a capital of 25,000,000 mk.; its note issues are limited to 35,000,000 mk. in excess of the gold on hand or in course of being received, the gold in any event to be maintained at not less than 20,000,000 mk In March, 1908, the notes in circulation amounted to 96,296,000 mk., the coin held being 24,971,000 mk., and a further sum of over 50,000,000 mk. due from abroad. It will be observed that under this arrangement there is ample margin for expansion.

ITALY

To Italy belongs the credit of having established the first banks in Europe—that of Venice having been formed in 1156, and that of Genoa in 1345. It is scarcely necessary, however, to trace in detail the vicissitudes through which the monetary system of Italy passed, even after the numerous petty states were consolidated in the present kingdom.

In 1859 the Bank of Genoa was reorganized as the Banca d'Italia (National Bank of the Kingdom of Italy), and, along with the Bank of Naples and that of Sicily, exercises now the right to issue notes. The Italian Government also issues about 430,000,000 lire of its own legal-tender notes. The three banks named are privately owned, but the Government exercises supervision over all of them, and directly appoints the chief officers in the two smaller concerns. The monetary system of the country is bi-metallic, the unit being the lira = 9½*d.* sterling.

The Bank of Italy has a subscribed capital of 240,000,000 lire, with 180,000,000 lire paid up. The regulations regarding note issues are as follows. The maximum ordinary issue is limited to about three times the capital of the banks, against which 40 per cent of reserve must be held, 33 per cent being in coin (at least three-fourths gold) and 7 per cent in foreign bills. Notes not covered by coin are subject to a tax, the rate being one-fifth of the average discount rate, not exceeding 1 per cent. Further issues are allowed against actual coin held, but additional notes may be issued on credit, subject to a tax varying from two-thirds of the discount rate and upwards. The amount of the issue is in this way influenced by the charge made to borrowers, and as this tax forms an addition to the discount, the result is to restrict the demand for loans. The system amply provides for expansion in times of need, as the chief bank with 1,000,000,000 lire of specie could lawfully issue 2,500,000,000 lire, subject to the condition that a part thereof would be taxed fully 10 per cent.

The Schultze-Delitzsch co-operative institutions in northern Italy form a special feature of the National Bank system of the country. Each member is obliged to hold at least one share, and he must complete payment for his share within three months. One peculiar feature of their banking practice may be noted here. The society grants loans on credit to individuals without security, but the borrowers must be of good reputation, carrying on a shop or trade, and be recommended by two sponsors. In such cases, however, the maximum amount of the loan granted is limited to 100 lire, repayable by weekly instalments. Besides these co-operative credit societies, which number 818, there are 158 ordinary

credit companies, and 11 establishments of the Credit Foncier.

It is an undoubted fact that the efforts put forth by the Italian Government during recent years to restore the finances of the country to some degree of steadiness have met with great success, the result being a marked advance in the value of Italian securities and in the credit of the country generally. This is shown in the price of Italian Rentes, which ten years ago stood at about 71, and are now fully par.

The Bank of Italy has entire charge of the State Treasury service throughout the country without remuneration, and must deposit Government Bonds with the Treasury as security for the custody of the State funds. In addition to the taxes imposed upon note issues, the banks are required to grant loans to the Government at 1½ per cent interest against bonds, and to share their profits on all dividends over 5 per cent. A statement of affairs of the Bank of Italy at 31 December, 1910, is subjoined:—

BANK OF ITALY

LIABILITIES		ASSETS	
Capital paid up	Lire 180,000,000	Cash	Lire 1,070,947,467
Reserve	60,025,413	Bills . . .	609,088,558
Note Circulation ..	1,523,534,350	Advances, &c. . ..	397,474,023
Current A/cs. and Deposits	207,315,243	Sundry Assets	189,930,713
Treasury A/cs. .	209,489,863	Buildings	24,988,993
Sundry Liabilities . . .	94,670,590	Deposits *per contra* ...	2,237,047,776
Profit and Loss	17,394,295		
Deposits *per contra* ...	2,237,047,776		
	Lire 4,529,477,530		Lire 4,529,477,530

SWITZERLAND

In 1875 the Federal Government took control of the currency functions of the various banks of the country, and in 1905 a central bank was created, the Schweizerische National Bank, which began business two years later. Its charter continues for twenty years, and the bank has now a monopoly of note issuing. Prior to 1905 the currency of the country was supplied by as many as thirty-six banks, whose actual note issue was about £9,668,000 against a metal reserve (including 90 per cent gold) of £4,744,000. The head offices are in Zurich and Berne, and the number of branches and agencies has been steadily increased.

The capital of the bank, of which only one-half has been paid up meantime, is 50,000,000 francs, three-fifths of which was allotted to existing banks of issue and to cantons, according to population, the remainder being subscribed for by Swiss citizens and corporations. No portion of the capital is held by the Federal Government. The management is controlled by a council of forty, chosen for one year, twenty-five of whom are elected by the Government. The bank is entitled to issue notes without limit, provided it maintains a gold reserve of 40 per cent, with commercial paper for the balance. Of the profits, 10 per cent must be applied to surplus until this equals 30 per cent of the capital. Any excess of dividend over 4 per cent is claimed by the Government, who hand over two-thirds of this revenue to the various cantons, to reimburse them for the loss of taxes upon notes previously collected by them. The liabilities and assets of the National Bank of Switzerland as at 31 July, 1911, were as follows:—

NATIONAL BANK OF SWITZERLAND

LIABILITIES		ASSETS	
Capital paid up	£1,000,000	Cash	£7,077,000
Reserve	30,000	Bills Discounted, Loans, &c. ...	4,935,000
Notes	10,415,000	Investments	504,000
Deposits, Current A/cs., &c. ..	800,000	Buildings, &c.	1,128,000
Sundry Liabilities	1,399,000		
	£13,644,000		£13,644,000

CANADA

In our review of foreign banking some reference may alse be made to the system which prevails in Canada. The existing Bank Act there dates from 1890, and under its provisions banks which are legally authorized to carry on business as such may issue notes to the full amount of their paid-up capital, solely upon their own credit, and without any prescribed coin reserve. Each bank, however, is obliged to maintain in the hands of the Government a guarantee fund equal to 5 per cent of the average amount of its note circulation. This is called the "Circulation Redemption Fund". The notes form a first charge on the assets of the bank, besides being guaranteed by the Canadian Bankers' Association, which consists of all the chartered banks in Canada. It may be of interest to point out that in Canada no person or institution outside the regular State authorized banks can legally use the word "bank" or "banking house", or any other similar term, although this does not imply that all purely banking business is monopolized by the banks.

The Dominion Government exercises an actual supervision, and the banks themselves co-operate freely with each other, with the result that there have been few actual suspensions in Canada and bank notes have always been fully redeemed. Besides the notes of the various banks the Dominion of Canada itself issues Government legal-tender notes, the amount of these being limited and secured by coin. The Dominion notes are generally held in the reserves of the various banks, the greater part of the circulating medium of the country consisting of ordinary bank notes. Gold coin practically does not circulate at all, as it is held for the most part by the banks in security of their notes. Silver is used principally by retail dealers. Severe penalties are imposed for excess issues of notes, and numerous centres have been established where the larger banks of Canada send for redemption the notes of their competitors. Notes must be redeemed on demand at these centres, under penalty of insolvency proceedings.

No bank can now be established in Canada with less than $500,000 of capital, of which not less than $250,000 requires to be actually paid up in cash to the satisfaction of the Minister of Finance before a licence to commence business is obtained from the Treasury Board. Shareholders are liable for an amount equal to the full par value of their shares, the only bank in the Dominion excluded from this double responsibility being the Bank of British North America. Monthly reports of each bank's position must be published in the newspapers in a somewhat exhaustive form, including as a separate item loans to directors or to firms in which they are partners.

So far as ordinary banking practice is concerned, loans upon or purchase of bank stocks, or mortgages on real estate are prohibited, except that the latter may be taken in security for existing debts. Both in respect of its numerous branches and otherwise the Canadian banking system closely resembles that of Scotland; and some writers consider that the functions of banking are nowhere so well performed as in Canada.

Owing to the country being almost wholly dependent on agriculture, the demand for money is comparatively seasonal, and is influenced largely by the crops.

In 1909 a new measure was introduced permitting banks between 1 October and 31 January in each year to issue additional notes to an amount not exceeding 15 per cent beyond their combined capital and reserve. In return for this privilege the banks pay to the Government Finance Department interest at 5 per cent per annum for the period during which such excess exists. This provision affords some degree of elasticity at a time when, owing to the moving of the crops, more or less stringency is generally experienced. During the crisis of 1907 in the United States a demand arose in Canada for additional facilities, and the Government was forced to issue a further supply of Dominion notes—a most unusual proceeding.

According to recent statistics the total deposits of the Canadian Banks amounted to about $709,000,000, deposits for fixed periods being considerably higher than those repayable on demand.

The Canadian Bankers' Association was formed to ensure the note circulation of each bank by means of a guarantee from the other banks, and in Canada every recognized bank must become a member of the Association. A general inspection of the banks is made periodically, particularly in respect of circulation, reserves, &c., and should any bank fail, the Association takes charge of the liquidation.

UNITED STATES OF AMERICA

The banks of the United States of America may be grouped under five separate heads, although different banking regulations apply throughout the various States. These are, in the order of their importance—

National Banks,
State Banks,
Savings Banks,
Private Banks, and
Loan and Trust Companies.

We shall briefly refer to these in their inverse order.

Loan and Trust Companies

are concerns formed on modern lines, prepared, if terms can be arranged, to undertake financial operations which an ordinary bank would scarcely be disposed to handle. Many of these Trust Companies are of undoubted standing, but their administration is not invariably regulated according to the canons of sound banking, and in times of stress they are apt to become a source of weakness to regular banking circles. This is more particularly the case in New York and in the large cities, a fact which was amply demonstrated in the panic of 1907. Trust Companies are in some respects the most essentially American of the United States financial institutions. The earliest of these —the United States Trust Company of New York —was incorporated in 1853 "for the insurance of lives and to act as trustees and executors". Since that time the growth of such concerns, both in number and resources, has been very marked. The possession of large surplus funds gradually led to banking operations being undertaken, and the banking side has developed now to such an extent that the original feature of the business has become, to use an Americanism, almost a "side line". Such companies do not issue notes, nor, theoretically, do they discount bills, but they buy bills from the brokers, which is pretty much the same thing. Nearly all other departments of ordinary banking are undertaken, the companies acting also as executors and trustees under wills and settlements; as trustees for bond and debenture holders; and as receivers of companies in liquidation. A favourite class of business is that of underwriting issues of stocks and bonds, which occasionally leads to the Trust Companies being loaded up with unrealizable securities. Trust Companies are not bound by statute to maintain any fixed reserves, nor to furnish returns of a searching character like other banks, so that as banking institutions they are virtually free.

Private Banks

What are called "Private Banks" in the United States are simply trading partnerships formed to carry on legitimate banking operations. They are, for the most part, comparatively small concerns, and are of course subject to whatever local statutes or regulations may be applicable in the State where they are located. Unlike our experience in Great Britain the number of private banks in the United States is on the increase, their stronghold being in the leading agricultural centres such as Chicago and Minneapolis, where they hold nearly three-fourths of the total banking deposits. The private bankers of New York and other eastern cities interest themselves in foreign exchange operations, the bulk of which is transacted by them, as was the case with the private bankers in England until recent years. They also do a large business in the promoting and underwriting of loan and share issues, sometimes forming syndicates to acquire the whole of a particular issue, which they can afterwards place on the market to advantage. This may be said to be their main function, but the National Banks and State Banks are now cutting in and competing with the private banks for this business to a considerable extent, not always, it is believed, to their ultimate advantage.

Savings Banks

in the United States are in a class by themselves, and have attained to a much more prominent position there than with us. They perform more varied services than the ordinary Savings Banks of the United Kingdom. Some accept deposits as low as ten cents, while others fix the minimum at one dollar; but with millions of depositors the total of the deposit money even in such small sums must reach a very large figure. The number of such banks in October, 1910, was 1759, and their total deposits $4,070,000,000. Depositors number about one in ten of the population, while the average deposit is believed to be in excess of any other country in the world.

As a rule thirteen or more persons are required to organize a Savings Bank, and, as their own deposits form the capital, any profits earned belong to themselves. The administration is by a board of trustees who do not receive remuneration per-

sonally, but they appoint the salaried officers by whom the ordinary business of the bank is carried on. Investments in Municipal and State bonds are permitted, as well as in landed property, but in the latter case to not more than 65 per cent of the total deposits of the bank. The trustees are expressly prohibited from granting advances on bills or other personal obligations, and from accepting deposits payable on demand, the idea apparently being to guard against runs in times of panic. Half-yearly reports must be rendered to the State authorities, and if this regulation be neglected the bank forfeits its charter and may be wound up.

State Banks

The State Banks of the United States are the oldest in point of history, but they are not Government institutions, as their title might imply. They are merely banks organized under the special banking laws of the particular State in which they operate, these laws differing widely in certain States. In New York City cash reserves equal to 15 per cent of their current liabilities must be kept by the State Banks, and a 10-per-cent reserve in the other cities of that State. Stockholders are responsible for the debts of the bank to the extent of the full par value of their stock, including any portion remaining uncalled. Many State Banks are comparatively insignificant concerns with capitals of $50,000 or less, but they supply in great measure the banking requirements of the smaller towns and are believed to be carefully and intelligently administered. Possibly the chief feature about these State Banks is their amazing growth, the number having increased from 3965 in 1898 to 11,220 in 1908; and to 15,950 in 1910. No notes are issued by these institutions, so that the National Banks have really a monopoly in that respect. Most of the States have a separate Comptroller of Currency for themselves, but nowhere are the returns required or the examinations so stringent as under the National Bank system. State Banks can be converted into National Banks on application to the Comptroller if based on a resolution by two-thirds of the capital holders, or the bank may go into liquidation in conformity with the State laws, and thereafter be reconstructed as a National Bank.

National Banks

By far the most important banks of the United States are the National Banks, which were called into existence by the Act of 1863 and the exigencies of the Civil War of that period. The original Act has been amended from time to time, the latest changes being those embodied in the Currency Act of 1900. Application to form a National Bank must be made to the Comptroller of Currency at Washington and be signed by at least five persons. The capital required is regulated by the population, and in a village having a population of 3000 the capital must not be less than $25,000. Of this capital, 50 per cent must be paid in cash before the bank can commence business, while the balance falls to be contributed in monthly instalments of not less than 10 per cent. The number of National Banks is now over 7600.

National Banks are obliged to apply a portion of their accumulated funds towards the formation of a reserve of from 15 to 25 per cent of their capital. During the year the Comptroller requires from each National Bank at least five reports, and these are of the most stringent character.

National Banks are not allowed to grant loans on real estate, their functions being limited to the discounting of bills, granting of loans on personal security, receiving of deposits, dealing in exchanges of coin and bullion, and the issue of bank notes. National Banks are not allowed to certify a customer's cheque for more than is actually at his credit at the time. Every National Bank is entitled to issue notes to the amount of its paid-up capital. Banks having a less capital than $150,000 must deposit registered interest-bearing bonds equal to 25 per cent of their capital, and banks with capital in excess of that figure must deposit bonds of not less than $50,000. On doing so each bank receives National Bank notes to the market value of the bonds deposited. These notes when received are in blank, but when signed by the officer of the bank they can then be issued to the public. In arranging its note issue each bank has further to deposit with the Comptroller in actual cash a sum equal to 5 per cent of the total issue as a redemption fund. Over and above this, National Banks are required by law to maintain a certain minimum cash reserve of their own, and for the fixing of this the cities of the States are divided into three classes, described as "Country", "Reserve Cities", and "Central Reserve Cities".

Each bank must receive the notes of every other National Bank at par, although such notes may not be legal tender as between individuals. One-tenth of the net profits is carried to reserve account until 20 per cent of the capital has been accumulated.

Banks in America, being independent institutions, without branches, are necessarily exposed in times of financial pressure to a good deal more strain than our banks on this side. This usually occurs in the autumn, and is chiefly due to the

"moving of the crops", which necessitates the command of large sums of ready money. As a measure of protection, the National Banks in most of the larger towns have formed themselves into a clearing-house association or institution, all specie held in their reserves being merged into one common fund for mutual benefit. "The effect of this arrangement is that, if any bank experiences a disproportionate demand for specie, it is supported by the whole of the central fund, while its debts to the other banks are discharged by pledging its securities."

CLEARING HOUSES

In course of time, when it became practically impossible to present every cheque for payment at the bank in London on which it was drawn, a system of settlement was devised, which eventually resolved itself into what is known as the Bankers' Clearing House. It is interesting historically to go back to the origin of this method of banking settlement, and quite a number of writers have endeavoured to deal with it. Gilbart mentions that the system of clearing was instituted in 1775, but probably something of the kind was in existence prior to that date, and the city of Edinburgh is credited with having established such a system before its adoption in London.

An old London guidebook informs us that the banks in that city employed clerks called "clearers", who used to meet together and settle their accounts on the top of a post, or on one another's backs, in Lombard Street. Resort was frequently made to a particular banking house which had a recess in the window; but this, although an admirable arrangement for the "clearers", was found inconvenient for everybody else, and they were often summarily ejected. This led eventually to the establishment in 1810 of a regular clearing house, and to the organization of a system which has already seen many developments, and may yet witness more. The object and intention of the clearing house is to expedite business, to effect a saving in the use of actual cash, and to minimize the risk of the transfer of large sums between the banks.

There are now in London seventeen clearing banks, all the other banks having to pass their cheques through one or other of these. Each of the clearing banks keeps an account with the Bank of England, and differences are settled by means of four clearings daily. The first, or Metropolitan, clearing, commences at 9 a.m. on ordinary days and 8.45 on Saturdays, and consists of cheques drawn upon the branches of clearing banks within the Metropolitan area, documents being receivable not later than 10.30 a.m. and 9.50 a.m. respectively. The second clearing at 10.30 a.m. is the morning Town clearing, and consists chiefly of drafts which have been received from branches and country correspondents by the morning post. Then there is the Country clearing, which commences at the same time, and is confined to cheques on country banks, assorted into bundles according to the names of the clearing agents. The afternoon clearing, which begins at 2.30, is the busiest of the day, and fresh "charges", or bundles of documents, are brought to the clearing house right up to the close at 4.5 p.m. The Metropolitan clearing referred to above was introduced so recently as 1906, and by its aid a very large amount of labour has been obviated. Cheques now bear printed on their face at the bottom left-hand corner the letters "T", "M", or "C", to signify respectively Town, Metropolitan, and Country. Such distinctive markings, besides being of service in arranging the cheques, enables bankers and the public to determine how long individual cheques will take to collect, or to be returned if unpaid.

The system of settlement is quite a simple one. Each bank takes its summary sheet, on which is printed the names of all the clearing banks, with a column on each side for the amounts owing to or by these banks, and on being summed the net difference between the two columns represents the amount due to or by the bank on general balance. The clearing clerk of each bank, in the first instance, finds the difference between his "in" clearing and "out" clearing with each of the other banks represented, and the result is the amount which, on the day's operations, is owing by that individual bank or the amount the other bank owes to it. Settlements are effected by means of transfer forms on the Bank of England, a portion of the form being signed by an officer of the Bank of England and by an inspector of the clearing house. If the balance be Dr. a *white* form is used; if, on the contrary, a balance is to be received on account of the day's transactions, the transfer form is *green*. Facsimile specimens of these forms will be found in Mr. Howarth's little volume, entitled *Our Bankers' Clearing System and Clearing Houses*, as well as in the handbook on this subject by Mr. David M'Kie, Edinburgh.

The totals of the documents passing through the clearing house have become enormous, the amount of the transactions reaching from £2,000,000 to

£3,000,000 weekly. The total sum dealt with by the London Clearing House in 1911 was £14,613,877,000. Besides the London Clearing House there are similar institutions in at least nine of the largest English provincial towns, and the total amount dealt with by these establishments in 1911 was £773,546,350. Such clearing houses have been established to facilitate the collection of bills and cheques payable within a specified radius, instead of transmitting them through the London Clearing House. Balances are usually settled by cheques on the local branch of the Bank of England where such exists, an account being kept with it by each of the local banks.

The clearing-house system has also been applied to the settlement in London of transactions in goods such as sugar, cotton, &c.; and there is also in London a clearing house for transactions between the various railway companies. (See Part V, Chapter III.)

Scotland

In Scotland, where there are eight leading banks only, there is a daily exchange of notes, and in not a few of the larger towns a clearing house for the negotiation of cheques and other documents has been established. The exchange of notes between the Scotch banks has long existed. In 1875 a daily exchange of notes was introduced at every town or place where there were two or more bank offices, and as this was found of advantage in reducing the quantity of notes required for till money, the system was permanently adopted. A second exchange takes place on Saturday afternoons, the object being to keep down as far as possible the amount of notes in actual circulation, and thereby to lessen the amount of stamp duty payable on the notes. Balances are settled daily by means of drafts on Edinburgh. The ultimate settlements take place in Edinburgh twice weekly, the balances being carried forward from day to day. On Monday and Thursday in each week the final balances are accounted for by transfers payable in London four days later, subject to interest thereon at deposit rate. The mode of settlement adopted in Edinburgh seems rather involved, but the idea is to keep down to the smallest limit the number and amount of the drafts on or transfers to London. This is effected by placing the highest Dr. balance against the highest Cr. balance; in other words, the largest debtor pays the largest creditor. If the former has anything over, it is applied towards paying the second largest creditor, and in this way the balances ultimately due for or against are reduced to a minimum.

DISCOUNT COMPANIES

Another important class of institutions which cater for banking business are the discount houses of London. The business of the bill broker is one which has grown up to a large extent within the past sixty years. Although acting as an intermediary between the banker and the merchant, the bill broker is in reality a valuable auxiliary to the banks, as practically the bulk of the first-class bills throughout the country find their way into the hands of London bill brokers.

A common idea prevails that bill brokers deal in first-class paper only. This, however, is not the case, as they are prepared to negotiate ordinary mercantile bills to a limited extent, provided the position of the various parties to them is satisfactory. For this latter class of bills, however, it is usual to charge a higher rate of discount.

Probably the largest clients of the discount market are the Colonial and Foreign banks, from whom they buy large parcels of bills, bearing, as a matter of course, the endorsement of the seller.

The bill broker obtains the greater part of his resources by borrowing from the joint-stock banks such portions of their liquid funds as may not be needed for the day's business. With this and other moneys under his control he discounts any bills offering for sale. Owing to the cheapness with which he is able to borrow from the banks, he is in a position in normal times to undercut their rates; but this action the banks do not resent, as it permits of the employment by them of their funds to the very fullest extent, and practically speaking the longest period for which they lend to the bill brokers is seven days. Loans may also be taken for shorter periods, or from one afternoon till the following morning.

The supply of money is at all times the chief factor in determining the discount rate, and in proportion to the accuracy with which the broker can forecast the course of the money market will the results of his year's trading be profitable or the reverse. When the ordinary sources of money are inadequate the broker has recourse to the Bank of England, from whom he can borrow for seven days at ½ per cent over the bank rate. Towards the end of the year, and occasionally at other times, it may often pay the broker to go direct to the bank in order to obtain cash wherewith to buy bills, as these may run for the bulk of their currency at such a figure as amply to

repay any initial loss. When the conditions are reversed, and when rates are inclined to slacken, the bill broker turns out bills, in other words he sells to any who care to buy. It is in the latter phase that the highest discrimination and knowledge are required. As the funds with which the bill broker carries on business are so largely borrowed, it is evident these funds must be employed to their fullest extent.

The securities deposited by bill brokers for loans from the banks consist either of first-class bills or of what are technically known as "floaters". These are other securities of the highest class, including consols, certificates, debentures of certain Indian railways, and bonds of the Corporation of London, and of the London County Council.

In consideration of the bill brokers' guarantee, London bankers in turn are content to buy from them bills at a slightly lower rate than the regular money-market quotation, but the broker has usually a small profit out of the transaction. Banks generally purchase bills in this way towards the close of their financial half-year, or when rates, after a period of comparative steadiness, show a disposition to fall away. The advantage of buying from a bill broker is that the banker can obtain bills to any amount desired, and can stipulate that the bills shall mature within sixty or ninety days, so as to meet any demands which may be anticipated.

It would be a mistake, however, to imagine that bill brokers compete with the banks only in respect of discounts, as they are frequently willing to quote a slightly higher rate than that of the banks in order to receive a special deposit. This deposit, if not utilized for daily needs, may be lent on the Stock Exchange or otherwise placed at a profit. Bill brokers are also prepared to make applications for and to take up short-term loan issues, and they compete effectively with the banks in both these departments. The business of the discount companies is understood to be fairly profitable, the rate of dividend paid by the public companies being usually from 10 to 12 per cent. From the published balance sheets it is not possible to distinguish the actual amount of ordinary deposits obtained from the public and from the banks respectively, as the sum appears in one combined total. The auditor's dockets take special notice of the fact that the balance sheets do not show the amount of the bills and securities pledged in security against the deposits.

The following figures are from the balance sheets of the three largest London discount houses as at 31 December, 1911:—

	Capital and Reserve Funds	Deposits
National Discount Co. ...	£1,321,665	£15,208,207
Union Discount Co. ...	1,385,000	17,112,159
Alexanders & Co. ...	570,000	9,311,740

	Bills Discounted.	Bills Re-discounted.
National Discount Co. ...	£16,563,876	£3,982,888
Union Discount Co. ...	20,312,362	6,260,182
Alexanders & Co. ...	9,878,739	1,587,997

SAVINGS BANKS

It has been pointed out that, in common with many other beneficent institutions of our country, Savings Banks were not created by Act of Parliament, but were devised by various philanthropic individuals towards the end of the eighteenth century, the primary object being to encourage habits of thrift among the poorer classes. The Savings Banks of the United Kingdom, as we find them to-day, may be grouped under three heads:—

1. Savings Banks (also known as Provident Banks) established, after 1819, under the Act 59, George III, c. 62.
2. Trustee Savings Banks.
3. Post Office Savings Banks.

Of the first-mentioned class comparatively few now remain, and complete statistics of their position are not available. The Act under which they were established was applicable only to Scotland, consequently no banks of the kind are understood to exist in England or Ireland. The chief towns in Scotland where they now remain are Annan, Airdrie, Dumfries, Greenock, and Lockerbie, and the deposits at the larger of these places by the latest balance sheets were as follows:—

Greenock	£734,845
Airdrie	691,658
Dumfries	363,761
Annan	139,939

Such banks are allowed to invest their funds at discretion and not through the National Debt Commissioners, and they are in no way subject to them or to the Savings Bank Investment Committee. No statutory limit is imposed as to the maximum amount which may be deposited, either annual or total, but generally speaking no single deposit is accepted for over £10, and the total deposits in one year are limited to £50.

Trustee Savings Banks

In 1817 an Act was passed for the protection and encouragement of Savings Banks, and much subsequent legislation of a similar kind has been

engrossed on the statute books of the country. Trustee Savings Banks increased rapidly in number from their formation until the year 1861, when the Post Office Savings Banks were instituted. At that time many of the less important Trustee Savings Banks ceased business altogether and transferred their deposits to the Government institutions. It is estimated that up to the present no less than 444 Trustee Savings Banks have been closed in this way, and about £9,000,000 of deposits have been transferred to the Post Office Savings Bank.

Notwithstanding the falling off in number of the Trustee Banks the importance of these institutions remains undiminished, although any increase nowadays is probably due to the opening of branch offices. Generally speaking Trustee Savings Banks prosper more in the bigger towns, while Post Office Savings Banks are the most popular in rural districts. The following abstract of the growth and present position of Trustee Savings Banks may be of interest:—

Year.	Number of Banks.	Number of Accounts.	Amount due to Depositors.
1829	476	409,714	£14,311,192
1849	577	1,087,354	28,537,010
1859	624	1,506,776	38,995,876
1861	645	1,609,852	41,546,475
1879	449	1,506,714	43,797,023
1891	303	1,510,282	42,858,434
1902	229	1,670,394	52,505,081
1910	219	1,827,460	52,267,805

On 30 November, 1910, the total number of accounts open and the amount due to depositors was distributed as follows:—

	Number of Banks	Number of Accounts.	Deposits
England and Wales	142	1,165,286	£30,116,790
Scotland	63	580,656	18,970,682
Ireland	12	56,192	2,545,937
British Islands ...	2	25,326	634,395

The ten largest Trustee Savings Banks of the United Kingdom are as under:—

DEPOSITS AS AT NOVEMBER 20, 1910

Glasgow	£7,812,334
Liverpool	3,399,871
Edinburgh	3,336,848
Manchester	3,099,282
Dundee	1,623,093
Kingston-on-Hull	1,513,704
Aberdeen	1,352,254
Sheffield	1,194,576
Newcastle-on-Tyne	1,128,970
Preston	1,010,063

Most of the Trustee Savings Banks have a special investment department whereby depositors may invest funds beyond the limit of their deposit. Of the 219 Trustee Savings Banks in the United Kingdom 36 have special investment departments in operation.

Under the 1891 Act an Inspection Committee appointed by the Crown is authorized to inspect the books and accounts of every Trustee Savings Bank, and to present an annual report thereon to Parliament. The supreme head, however, is the National Debt Office, which virtually acts as a head office to the Savings Banks. The Trustee Banks are required to make a weekly return to the National Debt Commissioners of the amount of deposits and repayments, and the sum expended in management, besides rendering annually a complete statement of accounts and other statistics.

Post Office Savings Banks

Post Office Savings Banks in this country were established in September, 1861, and nothing in history is more marvellous than their growth and development. (See also Part I, Chapter VII.) There are now some 15,300 post offices in the United Kingdom transacting Savings Bank business, and the latest published returns state that eight million depositors had nearly £169,000,000 sterling at their credit as at December 31, 1910. If to this be added about £22,000,000 of money transferred by depositors to Government stocks a grand total is arrived at of £191,000,000. This in itself is an enormous sum, and accounts in some measure for the non-growth of the deposits of our joint-stock banks.

The leading features of the Act of 1861, which still forms the basis of the bank's operations, are tolerably familiar to the public. The total sum which may be lodged by a depositor in any one year is £50, and the maximum deposit £200. An exception is made in the case of Friendly Societies and Provident Institutions, who, subject to approval, may pay in the whole of their funds without restriction as to amount. One uniform rate of interest—2½ per cent—is allowed to all depositors. One objection attached to Post Office Savings Banks procedure is that no sum of money over £1 can be withdrawn at a branch until authority to that effect has been obtained from the head office in London. Against this must be placed the important advantage that a person may withdraw his deposit or a portion thereof at any part of the kingdom where he may happen to be. Arrangements exist whereby a depositor may telegraph for the withdrawal of a sum not exceeding £10, which becomes payable when the

local postmaster receives telegraphic consent from London. A depositor may also telegraph for the warrant of payment to be sent by return of post, and in this way payment of sums not exceeding £20 may be obtained on the following day.

It is interesting to note that the funds of the Post Office Savings Banks were doubled in each period of ten years between 1870 and 1900, as shown by the following table:—

1870.	Amount due to depositors ...	£15,099,000
1880.	„ „ ...	33,745,000
1890.	„ „ ...	67,635,000
1900.	„ „ ...	135,550,000

Since 1880 the Post Office Savings Bank has undertaken the purchase of Government stocks for its depositors, and a fairly large business is done in this department. The sum to be invested must not be less than £10, or the current price of that amount of stock; the stock credited to any one account yearly is not to exceed £200; and the amount credited to any one account is not to exceed £500 of stock. Similarly the Savings Bank also undertakes the sale of any stock at the credit of a depositor, or any part thereof, not less than £10, or stock of that value. Stock purchased in this way enables depositors to make fresh deposits in the Post Office Savings Bank up to the £200 maximum. A later Act provided for a reduction of the minimum stock which might be bought or sold by a depositor, but this Act does not appear to have been taken advantage of.

AGRICULTURAL AND PEOPLE'S BANKS

A good deal of attention has been directed of late to the question of People's Banks, and the subject came into special prominence through the evidence taken in July, 1910, by a Select Committee of the House of Lords on the "Thrift and Credit Banks" Bill. So far as Britain is concerned the movement seems to be identified with the question of small agricultural holdings, so that further developments may be looked for. No doubt there is a large section of the community whose business dealings scarcely warrant an ordinary banking account, but the existing joint-stock banks, through their branches, are ready enough to assist deserving borrowers, and the objection frequently urged that most of the leading English banks are managed from London, and therefore not in sympathy with country requirements, is more or less imaginary. Farming in the United Kingdom on a large scale has now become unprofitable, even where the occupiers are industrious and possessed of sufficient capital. How, therefore, a man who requires almost continuous financial help is to support himself and obtain an adequate return for his labour and outlay on a very small holding is not readily apparent. A farmer possessed of a little means, or who has friends willing to guarantee advances on his behalf, will seldom have much difficulty in obtaining any needed facilities from his banker, but the man who is virtually a labourer with limited savings, or none at all, cannot as a rule command the assistance necessary to start with and to carry on even a small holding. Yet it is precisely this class of the community that People's Banks are expected to benefit, and the fact remains that a system of banking designed to effect this very object already exists in several Continental countries and in Ireland.

The two systems which have acquired any degree of prominence are known as the Schulze-Delitzsch and the Raiffeisen systems, both inaugurated in Germany in the early half of last century. Interesting details of the operations and extent of these concerns will be found in a volume entitled *People's Banks*, by Henry H. Wolff. The primary difference between the two schemes seems to be that, under the former, unlimited liability is to a great extent the rule, while under the Raiffeisen system limited liability only is recognized. Although catering for a different class of the community both systems are said to have worked well in the districts where they were established. The Schulze-Delitzsch banks were not designed primarily for the assistance of the very poor, and were carried on chiefly among the inhabitants of towns. The predominant idea, however, in both schemes is, by the granting of small loans, to enable agricultural holders and others to carry on their enterprises with success.

Schulze-Delitzsch System

Schulze seems to have commenced his operations in 1849 in his native village named Delitzch, which had a population then of about 8000 inhabitants. The bank thus instituted was really a loan society on very humble lines, the whole membership — ten — consisting of working men It, however, demonstrated beyond dispute "the virtue and value of two factors — co-operation and credit", besides striking a blow at the exorbitant rates of interest levied by the moneylenders.

At the outset considerable opposition was manifested in certain quarters, and twenty years elapsed before the new scheme received legal recognition. Following upon the inauguration at Delitzsch, groups of loan societies were formed in various parts of the German Empire, and these in turn led to the foundation of People's Banks throughout the continent of Europe. It is now computed that the banks of this kind in Germany alone number over 6000, with some millions of members.

It need scarcely be said that the methods adopted by such banks possess a strong degree of similarity. Each member acquires a share, and the capital thus contributed, along with the stipulation of unlimited liability, encourages the introduction of outside funds in the shape of deposits and cash loans. The funds are advanced to the members for short periods; a certain portion of the profits is carried to a Reserve Fund; and the remainder added to the share capital. The expenses of management are nominal. The societies are supposed to be independent of each other and of any outside authority, except that a central association is formed which exercises supervision over the various district banks. The directors usually consist of three working-men members, who may be remunerated by a small fixed salary or by commission on profits, or both. The funds available for lending are: the Capital, Reserve, Deposits, and Cash Loans. The loans to members are arranged on practically what is known as the Cash Credit System in Scotland, whereby credits are afforded against a bond or guarantee having several other individuals as sureties, and the money advanced must be applied to a particular specified object. Loans are renewed or called up every six months, and the whole system on the face of it seems simple enough, but so far as the banking experience of this country is concerned it would be most difficult to carry into practice. The operations of each association are limited to a small area of not more than 1500 inhabitants, the idea being that the character and circumstances of each member will in this way become known to the other members whose liability is unlimited.

Raiffeisen System

The Raiffeisen system, the headquarters of which are now at Neuwied, was introduced by a social reformer of that name in the poorest and least-productive states of Western and Southern Germany. The only available moneylenders at that time were the Jews, who seemed to thrive on other people's misfortunes, and the idea was to counteract in some measure their excessive interest charges. Raiffeisen in his scheme placed the welfare of the borrowers in the foreground, and allowed no dividends, whereas under the Schulze-Delitzsch system the interests of the lenders were the chief concern. The difference in practice is important, although the principle of co-operation permeates both. Under the Raiffeisen system advances are granted for periods of two and three years, and care is taken that the loan is applied productively. Complete statistics are not readily available, but it is asserted that the banks carried on under both these schemes have been of immense benefit to the poorer classes of the German community, and have aided in the promotion of habits of thrift. On the other hand, it is contended that the German Savings Banks proper, with 55 per cent of their funds placed in rural and urban mortgages on loans up to ten years duration, form the strongest argument against the eventual success of the Schulze-Delitzsch theories.

In France the system of agricultural credits (*crédit agricole*) is supported by the State with funds advanced by the Bank of France. On the renewal of that bank's charter in 1897 it was stipulated that £1,600,000 (40,000,000 francs) should be contributed as an endowment for the agricultural credit fund, and under a special law farmers can now borrow on their agricultural or industrial produce, although such produce should remain in their own possession. Full precautions are taken to safeguard the shareholders of the Bank of France against loss on any transactions undertaken at the request of the Government. It is generally understood, however, that the formation and conduct of such banks in France has not met with anything like the same measure of success as those established on co-operative principles in other parts of Europe.

British Agricultural Banks

In Ireland Sir Horace Plunkett, working on much the same basis, has met with a fair amount of success; and in England also a few organizations of a similar kind, which serve as loan societies and as village savings banks, have been formed. Apart from these, however, it does not seem that the movement has made any real or substantial progress in the United Kingdom.

The "banks" referred to in this country for the most part are registered as "specially authorized" under the Friendly Societies Act, 1896, which imposes no legal restriction upon unlimited liability. This very question of unlimited liability, although claimed as a benefit and even as absolutely essential, is more than likely to prove a serious hindrance in the long run. Moreover, the British agriculturist is seldom disposed to place his finan-

cial position and monetary requirements before his near neighbours, and he invariably prefers to borrow from outside sources. In Ireland the banks of this kind carried on are of the most trifling dimensions, and out of 101 of those which submitted themselves to Government inspection a year or two ago, 26 were reported as "satisfactory", 36 as "fair", and 46 as "unsatisfactory". This of itself points to the fact that constant supervision of such institutions—necessarily entailing a good deal of expense—is imperative. Many of these "banks" borrow from Government Departments and from the joint-stock banks against the personal obligations of their own members. As their only source of profit available is the difference between the rate of interest paid and the interest earned, any surplus must be of the most trifling amount.

Other Banks

In Lord Carrington's address to the German National Agricultural Society in the beginning of August, 1910, pointed reference was made to the purely Land Mortgage Banks of Germany. The more important of these are: (1) "The Hypotheken Banken", or Mortgage Banks, situated mostly in towns; and (2) "The Landschaften" (Provincial Associations), which are in effect voluntary combinations of landowners, under the auspices of the State, to assist agricultural proprietors alone. Besides these associations, the Governments of certain of the German States have themselves formed separate land banks which are carried on under their auspices. All these concerns raise their funds by the issue of bonds, which are taken up by the public and are readily negotiable.

Banks of a similar kind were established at Milan in 1865, and hundreds of such institutions now exist in Italy. In Milan alone the Italia Bancaria has a capital and reserve fund of over half a million sterling, with more than five millions of deposits. Their regulations and procedure are much the same as in Germany. In many cases, however, no fixed share capital is subscribed, and loans which continue for a year or two are turned over by means of three-months bills, renewals being refused when found advisable. The Italian Government throughout has done little to encourage the movement, which only within the last twenty years has enjoyed legal recognition. There are in Italy savings banks of the ordinary type, but the People's Banks are more representative in virtue of the management being elected by the shareholders themselves.

Through the efforts and advice of Mr. Henry W. Wolff, already referred to, who is a copious writer on the subject, a number of "People's Banks" were introduced in Canada, and seem to have worked well enough there.

FOREIGN AND COLONIAL BANKS

A feature of special interest in banking circles is the opening of offices in London by foreign and colonial banks, who now to a much greater extent than formerly compete for general business with our native institutions. It may be said there is nothing very new in this, as at the close of the year 1898 there were no less than thirteen first-class foreign banks, with about £50,000,000 sterling of capital, which had offices in London. There is little doubt, however, that of late years this number has largely increased, although it is difficult to obtain complete statistics on the subject, or reliable information as to the volume and character of the business transacted. The number of foreign branch banks in London is now stated at twenty-six, with a united capital of £100,095,383, so that within twelve years the number and capital of these banks has been doubled.

The following table from the *Economist* of 21 May, 1910, summarizes the position from 1880 to 1910, so far as the foreign banks only are concerned, colonial banks being excluded:—

FOREIGN BANKS

	No	Capital.	Reserve, &c	Deposits.	Notes.	Total Assets.
1880	22	£18,153,000	£5,136,000	£21,358,000	£1,406,000	£64,175,000
1885	20	18,456,000	7,022,000	38,817,000	2,061,000	81,700,000
1890	18	18,329,000	6,655,000	67,591,000	3,118,000	130,163,000
1895	24	20,210,000	7,987,000	59,293,000	3,015,000	129,152,000
1900	24	29,694,000	12,790,000	115,462,000	3,592,000	216,127,000
1905	27	70,120,000	30,515,000	290,669,000	4,317,000	500,577,000
1910	28	91,805,000	48,396,000	418,898,000	3,724,000	704,295,000

A number of the smaller bank offices exist merely for agency purposes, or as an accepting medium for houses abroad, but certain larger foreign banks are keen competitors, even to the extent of occasionally sending representatives throughout the provinces to solicit business. There are, besides, not a few private mercantile firms of foreign origin who add a banking department to their offices in London. Business of all kinds is undertaken, including the negotiation of bills and shipping documents, the granting of loans and discounts, and the carrying through of payments by mail and cable transfers. Stock Exchange dealings, while distinct from ordinary banking, also receive considerable attention. Foreign banks earn part of their profits by buying, for investment, bills domiciled abroad, but this is a class of business in which our home banks do not participate. There is also an increasing tendency on the part of the public to place deposits with certain Continental banks, owing to the higher rates of interest offered, and to the fact that cheques in payment of interest are sent out half-yearly without any deduction for income tax being made.

The competition is probably most keenly felt in respect of business for which an influential London agent was formerly employed, as foreign bankers no longer deem it necessary to domicile their paper at an English bank. It is satisfactory, however, that the trustworthiness of our banking institutions has never been questioned, and their services are frequently requisitioned, even yet, by foreign banks already established in London.

In regard to bills drawn by foreign banks and accepted by their own London offices, there is always the possibility that such bills may be of the nature of mere finance or accommodation paper, having no real connection with actual trade transactions. Certainly any undue commitments in this way are a source of danger and possible disaster. On the other hand, the foreign banks in London must necessarily keep accounts at one or other of the larger clearing banks, and to that extent their connection is of value. It is also pointed out that their opening of branches is a proof that London still remains the centre of international trade, and of the importance which foreign nations attach to having a share in it.

One outstanding difference between many of these foreign banks and our own is in respect of the large amount of "paid-up" capital they have at command. While their capitals are fully paid with no further liability thereon, our banks trade really to a large extent on credit, the actual paid-up capital being comparatively small in relation to the volume of business transacted.

The returns made to the Inland Revenue Office by foreign and colonial banks transacting business in London do not include any list of shareholders, but a statement in the form of a balance sheet must be filed. In other respects they are subject to the provisions of section 274 of the Companies (Consolidation) Act, 1908.

Although many leading American private firms transact business in London, the United States of America has not, up till now, opened any joint-stock bank in England. This is doubtless due to the operation of the law of that country, which prohibits the establishment of American banks abroad. They have, however—in the Guaranty Trust Company of New York and the Farmers' Loan and Trust Company of New York—two concerns which, although not described as banks, undertake in reality many of the functions which are performed by foreign banks having offices in London.

The colonial banks, which to a large extent may be regarded as British concerns, have also made immense strides in London, and are now largely represented there. The following statistics, taken from the *Economist* of 21 May, 1910, show that in ten years the deposits of the colonial banks with London offices have increased by £127,000,000 and their total assets by £150,000,000:—

COLONIAL BANKS

	No.	Capital.	Reserve, &c	Deposits.	Notes.	Total Assets.
1880	27	£21,365,000	£7,603,000	£90,766,000	£7,166,000	£152,684,000
1885	28	21,731,000	9,593,000	124,580,000	8,153,000	188,765,000
1890	30	24,616,000	12,463,000	173,183,000	9,543,000	256,804,000
1895	30	28,679,000	1,952,000	165,770,000	6,917,000	235,614,000
1900	29	35,817,000	10,751,000	161,515,000	9,025,000	246,366,000
1905	33	37,907,000	16,464,000	216,192,000	11,834,000	313,337,000
1910	33	37,409,000	20,954,000	288,320,000	13,256,000	394,360,000

The question of retaliation from London has frequently been mooted, but so far only one English bank—Lloyds Bank, Ltd.—has taken steps in that direction, by opening an office in Paris.

CHAPTER III

THE LAW OF BANKER AND CUSTOMER

Introductory—Current Accounts—Deposit Accounts—Trust Accounts—Advances to Customers and Others—Bank Notes, Bankers' Drafts, Letters of Credit, &c.—Custody of Valuables—Banks as Custodian Trustees—Guarantees and Representations—Confidential Information—Bankers' Books in Evidence—Crimes in Connection with Banking.

INTRODUCTORY

A banker is one who receives money from customers to be repaid to them when drawn upon by cheque. It is doubtful if any other mode of payment is implied in the ordinary relation. Other relations invariably follow from the simple one of the receipt of money; but in order to constitute a person a customer of a bank it is clear he must have some sort of account with the bank. The term "banker" includes a banking firm, whether a private partnership or a company, but "bank" in this connection is not taken to include a Savings Bank.

There is a statutory restriction upon the number of persons who can be engaged in a private banking firm. Under the Companies Act not more than ten may be engaged in banking without registration under that Act, unless formed under any special Act of Parliament or letters patent. A banking firm may be a limited partnership if the number of partners, limited and general, does not exceed ten. Limited-liability banking companies are now governed by the Companies (Consolidation) Act, 1908. (See also Chapter II of this Part.)

A chartered bank is formed on grant of a petition to the Privy Council after reference to the Board of Trade, or the Foreign Office, Colonial Office, or India Office when the operations are abroad. It is now usual to leave the matter to Colonial Governments, and in this country new banking companies are invariably formed under the Companies Act.

Partnerships and Companies

There are, of course, a great many private banking firms in existence, but there has been a marked tendency in recent years for banking to be absorbed into the hands of large companies, private banks being amalgamated with or sold to banking companies. The days of the private firm may be said to be past. Bagehot said: "There has probably very rarely been so happy a position as that of the London private banker, and never perhaps a happier", but that condition has very largely given way, as he saw it would, to the demand for greater publicity and the greater security of associated capital. Owing, however, to the confidential relationship which must exist between a banker and his customer, which cannot always very well be maintained between the customer and the officials of a bank, there is room for regret that such a change should be so general. This is naturally an important consideration to traders and those who will at times require to borrow. In days gone by bankers lent very largely on personal knowledge and judgment of the individual. They were often prepared to give support to a man or a venture they believed in and accept little collateral security. It is obvious that the officials of a company are not free to act on this plan. It must not be supposed that the trusted manager of a branch bank is not the person who actually decides, subject to a reference to headquarters for formal sanction. Banking, however, has become more scientific, and its practice more uniform.

The powers of partners in a banking firm, as to the general conduct of business and the dissolution of partnership, do not differ from those of partners in other firms. Reference should therefore be made to Part III, Chapter III, of this work. The position of companies engaged in banking is also similar to that of other companies (see Part III, Chapter IV), but shareholders in banking

companies are not entitled to limited liability in respect of any issue of notes which the bank is authorized to make. It is seldom that bank shares are fully paid, so that there is an additional security to depositors. Limited banking companies with branches must put up in a public place at the registered office and all branch offices a copy of the Statement of Capital, Assets, and Liabilities.

Branches

As regards a customer each branch is a separate bank. Customers have no right to combine accounts kept at branches, and a customer having an account at a branch can only draw cheques on that branch, unless special arrangements have been made by which he is authorized to draw on another branch. It is usual for the bank to receive the customers' payments at any branch, and arrangements can easily be made for limited drawings at a particular branch other than the one at which the account is kept.

As regards the banking firm, the head office and branches are all one, the branches being merely agencies. For this reason, if a customer has an account at two branches, the bank is justified in looking to the balance at both and setting one account off against the other. For the purpose, however, of delivering a notice of dishonour, each branch is treated as a separate bank.

Officials

The officials of a bank are the directors, with powers and duties similar to those of ordinary directors; the auditors; the general manager; and managers of branches; with chief clerks, cashiers, and clerks.

The manager of a bank is properly the general manager, not the manager of a branch; and the general manager is the general agent of the company, subject only to the Board of Directors. "The duties of a bank manager", said Sir Montague Smith in giving judgment in the *Bank of New South Wales v. Owston* (1879), "would usually be to conduct banking business on behalf of his employers, and when he is found so acting, what is done by him in the way of ordinary banking transactions may be presumed, until the contrary is shown, to be within the scope of his authority; and his employers would be liable for his mistakes, and under some circumstances for his frauds, in the management of such business."

The manager of a branch is not such a general agent authorized to bind the banking firm. His authority is limited to the management of the particular branch under the control of the head office. He cannot, for example, bind the bank by his signature to a guarantee.

Upon the cashier falls the ordinary duty of judging the genuineness of an order presented for payment, and whatever he pays *bona fide* is a payment on behalf of the bank.

Although all the officials of a bank are strictly included in the word "clerk", the term "bank clerk" is generally applied to those who have no other recognized named position in the bank, and occupy a station inferior to managers and cashiers.

It is usual for every official and employee of a bank to find security, which may be done by personal guarantee or fidelity policy. (See Part III, Chapter VIII.)

Holidays and Business Hours

The effect of holidays on the payment of Bills of Exchange is dealt with in Chapter VII of Part III. The hours of business vary in town and country, being usually from 9 to 4 in town and 10 to 4 in the country, with one half-holiday in the week. Sub-branches are usually open for a much shorter time on certain days.

General Services of Banks

The services which a banker performs may be classified under the headings: Current Account; Deposit Account; Issue of Drafts, Circular Notes, Letters of Credit, &c.; Loans; Custody of Valuables; and Giving of Information. Banks also undertake the investment of funds and sale of securities, the receipt of dividends, pay, &c., and the payment of periodical demands upon the customer, such as club subscriptions, and many other duties.

CURRENT ACCOUNTS

The relation of banker and customer is the ordinary relation of debtor and creditor, but the banker is also under the obligation to honour the cheques of his customer, provided that he has funds in hand. The banker has the use of the money as an ordinary creditor, not as a trustee, except in special cases where he can be shown to have accepted a trust. It is therefore strictly a misnomer to speak of a man's assets as including so much "lying at the bank". "Money, when paid

into a bank, ceases altogether to be the money of the principal; it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it." . . . "It is then the banker's money; he is known to deal with it as his own; he makes what profit of it he can", said Lord Cottenham in *Foley v. Hill* (1848). A banker is therefore not a factor or bailee. A customer has no right to any specific money once paid over the counter; only a right to claim back the equivalent or prove against the estate if the bank has stopped. There are, however, exceptional cases, as in a case where after banking hours a sum of money was received and held apart for the customer, and the bank never opened its doors again. Here the customer was entitled to receive back the actual deposit, which never became part of the bank's assets.

A banker who receives payment on behalf of a customer from a third party is not entitled to hold or impound the money if his customer would have had no right to hold it. He is then only an agent. An amount lodged with London bankers for the benefit of an American company which failed before drafts drawn against the deposit were honoured could not be retained by the bankers against debts due to them from the American company. The company were at the time the money was paid to their agents actually incapacitated, and it was therefore held that the money was recoverable as having been paid under a mistake of fact—*Kerrison v. Glyn* (1911).

In certain cases sums may have been received for a specific purpose, and must then be so allocated by the bank. (See p. 236.)

An account between banker and customer may be subject to the Statute of Limitations, so that a customer would lose his right to a balance if not operated upon or acknowledged during the whole of six years; but an absolutely dormant account is, of course, a very rare occurrence, nor would a bank be at all likely to act upon a bare legal right. Such a thing in practice may be disregarded.

The common expression, "Money in hand and at bank", has been recognized as perfectly valid in dispositions by will, and for all practical purposes, so long as the bank is sound, such assets are realizable as a debt payable on demand, and may be so assigned or bequeathed.

Opening an Account

In the business of banking the most ordinary relation is that of a bank with those who open current accounts. To open an account it is usually necessary to have an introduction and a certain amount of money to deposit. It depends upon the character and size of the bank as well as of the account as to the terms on which the account is accepted. It is usual for a good current account to be accepted without charge by the bank, and without allowance of interest on the customer's deposit; but for the keeping of a small account, where a substantial balance is not maintained, the bank will usually make a nominal charge. The terms are often printed in the pass book. No bank would open an account with anyone who did not produce satisfactory credentials. On the other hand, a bank might be willing to credit a person suitably introduced who possessed no present funds.

Drawing on the Account

A customer is supplied with a pass book and a cheque book. A specimen of the customer's signature will be deposited at the bank, which may be his ordinary signature or any special form of signature which he elects to use in drawing his cheques. If the bank honours a draft which is signed in any other way, it will do so at its own risk. The pass book keeps a customer informed as to the state of his account, but is not absolutely conclusive either against the banker or the customer. (See p. 240.) The granting of a cheque book shows the necessity of being assured of a customer's character, as it may easily be the means of fraud. It is not absolutely necessary to use the form of cheque provided; a cheque will be perfectly valid written in the required form if a stamp is affixed by the drawer. (See p. 236.) But as a matter of business strict attention should be paid to the instructions of the bank, which are usually to the effect that: No blank cheques should be given to strangers, even though believed to be customers of the bank, and in no circumstance should cheques be given to unknown persons in exchange for cash; the amount of the cheque should be written in words commencing close to the words "the sum of" or immediately after "Order or Bearer", and the figures should be written close to "£" on the form supplied; alterations should be confirmed by full signature, not the initials of the drawer; no cheques should be drawn on blank paper or other form than that supplied by the bank; cheques sent through the post should be crossed.

If a customer does not obey these directions and loss results, as through forgery by the filling in of a space which has been left vacant, he would probably have to bear the loss as due to his own negligence and not that of the bank (but see p. 237).

Interest

Ordinarily banks do not allow interest on current deposits, but a customer may easily transfer anything more than a temporary balance to a deposit account. Some banks may agree to allow a certain rate of interest on a minimum monthly balance, or by special arrangement. Interest is only payable by agreement, or by custom implied from the method of dealing with the bank.

Bank's Duties

A person who opens a current account with a bank is the most ordinary instance of a bank's customer. From the fact that a current account is subsisting other transactions follow. Such services may be performed for one who has not a current account, but it is less likely.

A banker as agent for a customer is bound to use ordinary diligence in the clearing and payment of cheques, and to carry out reasonable instructions.

Money Paid In

Money paid into a current account by a customer is presumed to be the customer's own money, and the banker will not therefore be responsible should it turn out to be the property of someone else. Where, however, there are suspicious circumstances, and the bank is put on its guard and ought to have made enquiry, the bank may be responsible for assisting a fraud. In the ordinary way a payment in is made for the usual purposes of the account. If, however, a banker receives a payment for a specific purpose, he cannot apply the money generally. Supposing that a payment is made with instructions to meet certain named cheques outstanding, the money must be so applied.

Irregular conduct on the part of the customer may occur when he is a trustee, a partner, an official of an organization, or in any other way possessed of funds to which he has no absolute right. If the bank knows that money paid in is really in the customer's hands in such a capacity, the bank will be liable for assisting his fraud. If, for example, an official of a company pays into his private account postal orders belonging to the company, his bank does not obtain a good title to them.

Payment Out

The duty of the banker is to honour the drafts of his customer, always provided that the draft is in order, that payment is not countermanded, that there is a balance in hand, and that drafts are presented during business hours. In the absence of negligence in the customer which has enabled a fraud to be committed, the bank is liable for paying a forged cheque. (See p. 235.) There is, however, a duty on the part of the customer to inform the bank as soon as it comes to his knowledge that a forgery has been committed. Neglect of this duty may throw the loss on the customer. Although, strictly speaking, a customer cannot ratify a forged signature, which is a criminal act, if he ratifies the order to pay he is not able afterwards to set up that payment was not made by his authority.

The Order to Pay

A cheque must be an imperative and unconditional order to pay. A cheque must be in due form, that is, it must be drawn on a bank, payable on demand. If to order, it should be payable to a person. Irregular cheques such as those drawn to "wages or order" are of doubtful legality. A crossed cheque may be altered by the drawer and made "pay cash". A cheque marked "a/c payee" and not crossed does not cease to be transferable, such a marking not being more than a direction to the bank.

The order to pay must be unequivocal. It is usually, but not necessarily, expressed in words as well as figures, and if there is any difference between the two the words prevail. It is, however, the custom of some bankers to request correction of such a cheque, or to pay only the smaller amount, although the custom has no legal warrant. Probably a cheque is only legal if drawn in the English language.

The order must not be to pay on some condition or contingency, or out of some particular fund. It is sometimes stated on the cheque that it must be presented within a certain time, and this probably is not in accordance with strict validity. The better practice is to ask in a covering letter for prompt clearance, and to instruct the bank periodically as to stopping payment of cheques not cleared. A cheque must also be stamped, or if not stamped the paying bank is the only party other than the drawer which can affix the stamp.

Endorsement

A cheque must purport to be properly endorsed if endorsement is required. Bankers must see that the endorsement, when required, purports to be the signature of the payee or person having his authority. The real signature is sufficient when the name is misspelt, although it is customary to request a payee to write the name both ways.

The custom of banks varies in strictness with regard to endorsement; the bank must pay "in good faith, and in the ordinary course" of business to avoid being answerable for the incorrectness of the endorsement. Some banks require the endorsement to tally exactly with the description of the payee, while others are less exacting.

The formal requirements with regard to a cheque as a negotiable instrument have been discussed in Part III, Chapter VII.

Bills of Exchange

The banker is not bound to pay a customer's acceptance domiciled at the bank as he is to pay his cheque drawn on it, unless there has been an express or implied undertaking to honour the customer's acceptances — *The Bank of England v. Vagliano* (1891). Such a practice, however, will be very readily implied.

If a customer accepts a bill payable at the bank, it is full authority to the bank to pay, even though there is an insufficient balance in hand on the current account. (See generally Part III, Chapter VII.)

Negligence of Customers

If a customer is negligent in filling in a cheque, and fraud results from such negligence, he may be the loser. In the celebrated case of *Young v. Grote* (1827) the customer gave signed blank cheques to his wife for use in his business. She, in filling up a cheque for £50, left a blank in front of the word "fifty" (written with a small "f") and in front of the figures, thereby enabling the words "three hundred" and the figure "3" to be fraudulently inserted by a clerk. The bank paid £350. It was held that the customer was liable for the loss resulting, and that he was estopped from saying that he had not signed the cheque for £350. The bank had been misled by want of proper caution on the part of its customer. The decision has always been criticized, but it is at least a safe one for business men to act upon, and must appear to them to be reasonable. In the case, however, of *Scholfield v. Lord Londesborough* (1896), it was held that the acceptor of a bill of exchange was not under a duty to take precautions against a fraudulent alteration after acceptance. Lord Halsbury in that case strongly dissented from the decision of *Young v. Grote*, holding that the doctrine of a person's liability for assisting a fraud was no part of the law of England. In a recent Privy Council case this view was taken, and it was decided that when there is no evidence of negligence there is no ground for holding the customer liable for giving facilities to a forger by leaving spaces in which words might be inserted on a cheque—*Colonial Bank of Australia v. Marshall* (1906). The law on this question is not therefore in a clear and satisfactory state, but the rule of business should be observed; and therefore the subject does not require any further discussion here. It is clear that there is a business duty cast upon the drawer of a cheque, so to fill it in that fraud shall not be easy on the part of anyone into whose hands it falls. The need for these precautions is constantly exemplified in the criminal courts. The customer will pay attention to the instructions issued on the cheque book. (See p. 237.)

It is the duty of a customer in issuing mandates to a bank to take reasonable care so as not to mislead the bank, but, beyond the care which must be taken in or immediately connected with the transaction itself, there is no duty cast upon the customer to take general precautions to prevent forgery in the course of carrying on his business.

A person who knows a bank is relying on his forged signature cannot lie by and not divulge the fact until he sees the position of the bank altered for the worse. But mere silence for a short time, while the position of the bank is not altered or prejudiced, is not an admission or adoption of liability, nor is the person estopped thereby from denying liability.

Marked Cheques

The bank is liable for dishonouring a cheque to its customer only, and not to the payee, there being no duty towards the payee. A bank might possibly become liable to a payee if it had "marked" the cheque on presentation by a payee. This is a custom which obtains in America and Canada, but not in Britain, the only instance of marked cheques being between bankers themselves.

Stale Cheques

A cheque that has been outstanding and not presented for payment for a considerable time is known as a stale cheque. It is the custom to refuse payment of cheques which have been issued for six months or some longer period unless they are re-acknowledged by the drawer. There is no rule of law to support this practice with regard to out-of-date cheques. The legal position is that the cheque is valid for six years as between the drawer and the holder, unless the drawer is in a position to prove that he has sustained loss owing to the delay in presentation. (See Part III, Chapter VII.) In a case where a cheque which has been outstanding for a shorter period there

may be circumstances giving rise to suspicion on its presentation. The bank should therefore, especially if it is a large amount, make enquiry before payment. The conditions, however, under which a bank can even temporarily postpone payment are by no means clearly ascertained, and a certain amount of risk must often be run in the endeavour to avoid a larger risk. The ordinary duty of a banker is to pay at once on presentation, without enquiry other than the necessary enquiry which can be answered from his own books. He takes the risk if he dishonours a cheque, and a request for re-presentation is really a refusal of payment, the holder not being obliged to present a cheque a second time. In practice no doubt a reasonable holder would not object to a slight delay to enable enquiries to be made; but the fact that people will take a reasonable view is, unfortunately, not to be relied upon.

Funds in Hand

The question whether funds are actually in hand at the time the cheque is presented is one which has given rise to many disputes. In the well-known case of *Marzetti v. Williams* (1830) the account was in funds on 17 December to the extent of £69, 19*s.* 6*d.* On the 19 December at 11 o'clock a £40 note was paid in. At 2.50 on the same day a cheque for £87, 7*s.* 6*d.* was presented. The cashier referred to his books and said there were not sufficient funds, but the cheque might possibly pass through the clearing house. The cheque was not paid till the following day. The fact that there was sufficient money at the time was not clear from the books, because the payment of the £40 had not been posted up. It was held that the bank was liable in damages for dishonouring the cheque, though no special damage was actually proved.

As a general rule a bank is liable to a trader in substantial damages even if no special damage is proved. In other cases, without proof of special damage, the amount recoverable would be nominal.

Many cases have turned upon the question whether the account was in funds at the time owing to payments in. It is usual for a bank to notify generally when cheques can be drawn upon; the time depending upon whether a cheque is town, metropolitan, or country. A banker will take a risk if he treats what ought to be considered as a town cheque as a country cheque. (See also as to this and the rules of the Clearing House, Chapter II of this Part.)

If cheques are credited as cash by the bank when paid in they can be at once drawn upon, unless something occurs to deprive the customer of the right. The bank would be entitled to debit the account subsequently with a cheque not cleared. On Scotch or Irish cheques a small charge is made for clearing.

It is the balances on current accounts which the bank have to consider. If there is also a deposit account the bank need not take that into consideration, although the usual course would be to debit that account if the current account is overdrawn, especially if no notice were required for withdrawal. (See p. 241.)

Information as to Account

If the bank refuses a cheque, it should be done in a manner as little offensive as possible, the cheque being marked "not sufficient assets", or more usually "refer to drawer", or some such expression, so as not unduly to disclose the state of the account. A bank is not justified in giving information with regard to the account so as to enable a holder of one cheque to acquire preference over the holder of another. There must be sufficient money in the bank to pay the cheque in full or the bank is entitled to dishonour it. Of course, as a matter of practice, the bank may allow a customer to overdraw, and honour a cheque when there are some but insufficient funds in hand to meet it, or even if there are no funds at all, treating the cheque as a request for an overdraft. In a case where a bank enabled the holder of a cheque to pay in a sum of money which with the available balance was sufficient to meet their cheque, it was held to be a conspiracy to give this holder preference over other holders of cheques. The bank had no right to disclose the state of the account, their duty being limited to refusing the cheque on the ground of "not sufficient funds"—*Foster v. Bank of England* (1862).

As to the general duty of the bank with regard to giving information as to customers, see p. 246.

Special Classes of Accounts

In the opening of accounts for special persons or classes of customer, banks are in the habit of taking precautions and requiring special information.

A *joint account* may be opened in the name of two or more persons. A special arrangement will be made at the time as to drawing on the account; whether the signatures of one, two, or all are required on each cheque depends on the instructions given to the bank by all parties. In the absence of any such arrangement all must sign. Where an account is in joint names, for the benefit of the survivor, proof of death is required before the account can be dealt with by the survivor.

Married women are now free to have their own accounts at a bank, and money paid in by them is presumably part of their separate estate. There may be a case, however, in which a married woman has paid in her husband's money, or in which the husband and wife have a joint account, either of them drawing upon it.

There is no reason to doubt that *a minor* may safely be granted an account, so long as he is not allowed to overdraw, which would be a form of loan, and therefore not binding in an infant. The accounts of *trustees* and *executors* will be accepted on special arrangement.

The account of a *syndicate* or *society* is usually opened by the promoters or officials, to be drawn upon by a treasurer or secretary or other persons, and no difficulty will arise so long as the account remains in funds, or if it is guaranteed. Disputes have, however, often arisen as to who is liable on an account opened in this way. In most cases the bank is justified in looking to the individuals whose names are given; in other cases there may be evidence that the bank has agreed to credit the particular proposal or venture in anticipation of funds being raised; while in other cases there may be a merger of the account or a transfer to a company afterwards formed.

All banking transactions of Friendly Societies, Building Societies, &c., must be strictly in conformity with their rules, a copy of which should be lodged with the bank.

The more usual *commercial accounts* are those of a partnership or company, the partnership account to be drawn on in the ordinary course of business by any one partner or in accordance with the terms of the partnership and the instructions to the bank. Where the signature of one partner is sufficient, as is usually the case, the bank may sometimes incur risk in honouring a cheque drawn by a partner for his private purposes; but not if payments are made *bona fide* and the bank is not interested.

In opening an account with a limited company a bank will require production of the certificate of incorporation and Memorandum and Articles of Association to show the ordinary powers of directors on the current account, and also the borrowing powers of the directors and the company; an overdraft to a company which has no powers of borrowing or which has exhausted its powers being equivalent to the creation of an invalid charge. (See Part III, Chapter IV.)

Countermand of Payment

Where a current account exists it is the duty of the banker to pay on the customer's order, as signified by the cheque when presented, if he has assets in hand. The exceptions are where payment is countermanded by the customer, directly or indirectly, or where the banker receives notice of his death. The countermand is generally by actual instructions of the customer, usually given personally or by letter, as a request to stop a particular cheque. Provided identity is sufficiently established, the countermand may be by telegraph or telephone, but a bank is not answerable for not acting upon an unauthenticated telegram. Payment of all cheques is also countermanded by the banker's having notice of the customer's bankruptcy, or by the service of a garnishee order upon the banker attaching debts due to the customer, or by other injunction granted by a Court of law suspending operations on the account.

Garnishee

A garnishee order attaching all debts owing or accrued due from the garnishee to a judgment debtor attaches the whole of the amount of the balance in the banker's hands, irrespective of the amount of the debt concerned. It is not therefore sufficient to provide for the actual amount of that debt and then allow of ordinary operations on the balance, and the banker is protected in dishonouring the draft of a customer—*Rodgers v. Whiteley* (1892).

After the order has been satisfied by payment into Court the balance may be assigned. A bank is bound to pay an assignee of the balance on receiving notice in writing of the assignment.

Bankruptcy

As soon as a bank has notice of a receiving order or of bankruptcy, no cheque of the customer should be paid, as his property is vested in the trustee from the date of the first available act of bankruptcy within the preceding three months. (See Part III, Chapter XI.) If a bankrupt pays into his current account property acquired after his bankruptcy, although after-acquired property may be attached by the trustee, the banker is obliged to honour the cheque until the trustee actually intervenes.

Death of Customer

On the death of any customer, the bank will require production of probate or letters of administration (or confirmation in Scotland) before allowing any dealings with funds in hand.

If the banker pays a cheque after the customer's death, but without knowledge of his death, the

payment is good. The account of a firm is not affected by the death of a partner.

Difficulty arises in the case of cheques given just before death. They must ordinarily be cleared before death, or at least before knowledge of a customer's death comes to the bank. Where a cheque had been given payable to the testator's wife or order before his death, and endorsed by the payee and paid into a foreign bank against an amount drawn out, it was held to be payable by the bank on which it is drawn out of the estate, although not presented until after death—*Rolls v. Pearce* (1877).

The gift of a cheque, bill of exchange, or promissory note, payable to the deceased donor, although not endorsed by him, is good. The gift of a banker's deposit note which is not a negotiable instrument, unless a form of cheque thereon has been duly filled in, would not be a good gift in case of death, but by endorsement and delivery a good equitable assignment of such a deposit note is effected—*In re Griffin* (1899). (See pp. 241, 242.)

The Pass Book

As a general rule the pass book serves to show the state of the account between banker and customer, and when on interchange it is approved by the customer it is *prima facie* an admission of the state of the account. A mistake may be subsequently rectified if neither party has been allowed to alter his position. There is, however, no absolute legal rule with regard to the pass book. The customer is entitled to act upon entries in it, but the bank would be at liberty afterwards to show that the entries in it were not in accordance with the real state of the account. If in the meantime the customer has drawn upon his account in reliance on the correctness of entries in his pass book the banker must honour the draft, although afterwards he may adjust the account. Refusal under such circumstances would entitle the customer to damages—*Holland v. Manchester and Liverpool District Banking Company* (1909).

It would seem advisable that banks should make a periodical approval by their customer of the pass book entries a matter of agreement, as without such agreement it is clear that entries in the pass book, even when not objected to by the customer, do not amount to a settled account.

Mr. Hart says: "Where the customer has so acted as to render the entries a settled or stated account, and has been guilty of negligence with regard to them, in consequence of which the banker has altered his own position to his disadvantage, it is safe to say that the customer is precluded from disputing their accuracy". It is, however, clear that the fact of the pass book being returned to the bank without objection to a pencilled entry of the balance does not constitute a settled account —*Kepitgalla Rubber Estate, Limited, v. National Bank of India, Limited* (1909).

Closing the Account

A banker is justified as well as a customer in closing an account, but the banker must give due notice of his intention to close and arrange for the payment of outstanding cheques so far as he has assets. This is clearly necessary, as otherwise the credit of the customer would be vitally affected. When, however, the customer has notified an assignment to creditors, it is not necessary for the bank to give him notice of closing his account.

The account is automatically closed also by the customer's death, or by notice of insanity or available act of bankruptcy, or winding up of a company. Its operation is suspended by garnishee order, while the stoppage of the bank suspends operations on all accounts.

Appropriation of Payments

The general rule with regard to payments is that the debtor may at the time of payment appropriate a payment to any specific debt. If the debtor does not appropriate it the creditor may at any time make the appropriation, and may exercise the right up to the last moment, by action or otherwise. The express or implied intention of the creditor governs if neither the debtor nor creditor has appropriated a payment. The rule is established by the well-known decision, known as *Clayton's case* (1816), in the judgment of Sir William Grant, Master of the Rolls: "Presumably it is the sum first paid in that is first drawn out. It is the first item on the debit side of the account that is discharged, or reduced, by the first item on the credit side. The appropriation is made by the very act of setting the two items against each other. Upon that principle all accounts current are settled, and particularly cash accounts."

Even this rule, however, which applies to all accounts where there is one blended fund, must yield to the obvious intention of the parties, and may not apply where there has been no blending of old and new accounts, or where a creditor intended to make, and reserved the right to make, an appropriation. The rule does not apply between trustee and beneficiary, but it does apply between beneficiaries as to trust moneys, as where a solicitor paid money of several clients into his own account—*In re Stenning* (1895). Where a

stockbroker had two accounts with a bank—a current and a loan account—and deposited securities belonging to customers, though unknown to the bank, to secure general indebtedness, it was held that the two accounts must be treated as one—*Mutton v. Peat* (1900).

Money Paid by Mistake

It is a general rule of law that money paid by mistake of law cannot be recovered, but under certain circumstances money paid by mistake in regard to a fact touching the actual transaction may be recovered. Cases of the latter are in practice very rare, as circumstances usually make it unfair and inequitable to other parties that the payment should be set aside. It used to be a well-accepted rule of law that once a cheque was paid the money could not be recovered from the payee; money once placed on the counter of the bank was effectively paid away. Recent decisions, however, are not a little conflicting. The rule which obtained for so long was that in *Cocks v. Masterman* (1829): The holder of a bill of exchange is entitled to know on the day when it becomes due whether it is an honoured or dishonoured bill, and if he receives the money and is suffered to retain it during the whole of that day the parties who paid it cannot recover it back.

In *London and River Plate Company v. Bank of Liverpool* (1896), Mr. Justice Mathew applied this rule generally and extended it. "If the mistake is discovered at once it may be the money can be recovered back, but if it be not, and the money is paid in good faith, and is received in good faith and there is an interval of time in which the position of the holder may be altered, the principle seems to apply that money once paid cannot be recovered back. "The rule", added the learned judge, "is obviously as it seems to me indispensable for the conduct of business." However, in the *Imperial Bank of Canada v. the Bank of Hamilton* (1903) the Privy Council decided otherwise, and held that *Cocks v. Masterman* applied only to negotiable instruments requiring notice of dishonour. In that case a cheque for five dollars had been certified, in accordance with the Canadian custom of marking cheques, by the Bank of Hamilton, but there was a blank space which enabled the cheque afterwards fraudulently to be altered to five hundred dollars. This amount was paid to a holder for value and the mistake not discovered till the next day. It was held that there was no negligence in the certifying bank entitling the paying bank to recover as between itself and an innocent holder for value. The certifying bank were at liberty to show that the cheque had been fraudulently altered after being certified, and to recover back the difference of 495 dollars.

These conflicting decisions are discussed by Sir John Paget. He thinks, in the case of a person innocently and for value holding a bill or cheque bearing a genuine endorsement, after one or more forged endorsements or other signatures, the judgment of the Privy Council would preclude recovery of the money paid to him, if he had lost the opportunity of giving notice of dishonour to genuine endorsers. The judgment of Mr. Justice Mathew would prevent such recovery if the position of such person might have been altered in the interval, as the instrument was negotiable. When a man has innocently obtained payment of a real cheque or bill taken *bona fide* and for value, but on which the only or last endorsement is a forgery, the decisions are at variance. It is a point which the decision of the House of Lords can only satisfactorily determine.

To relieve a banker from the consequence of paying on a forged cheque, it is not enough to show that the conduct of the customer enabled the fraud to be committed. The customer's conduct must have caused the banker to pay the money on the forged cheque. Where directors of a company appointed the son of the chairman as secretary, the father having knowledge that he had previously committed a forgery, and the secretary had control of the books and forged the signature of one of the directors on a cheque purporting to be drawn for the company, it was held that the directors had not been guilty of such negligence as to estop them from recovering from the bank —*Lewes Sanitary Laundry Company v. Barclay* (1906).

DEPOSIT ACCOUNTS

It is usual for bankers to receive sums of money on deposit for their customers or others, either at an agreed rate of interest or at interest varying with the bank rate. Such a deposit is a general loan, and does not form any specific fund on which the depositor has a claim. The rate of interest allowed on deposits is generally notified by banks from time to time, being higher when deposits are left for a longer term than when subject to return at call or at short notice. Amounts received upon deposit for a customer are not to be drawn upon by cheque, although as a matter of practice, if the

balance on a current account is absorbed, the bank might debit the deposit account instead of dishonouring the cheque. The proper course is to give notice of withdrawal or transfer to current account. It is a common, but by no means an invariable, practice to issue a formal deposit note. This note may bear on the back an order to pay in the form of a cheque. It will be filled up by the depositor when he wishes to withdraw. The deposit receipt is not a negotiable instrument, nor is it transferable, but it may pass by endorsement and delivery, and, as an equitable assignment of the amount deposited, gives a right of action.

Where a deposit fund is repayable on demand, or where notice of withdrawal has already been given, it forms part of the funds due or accruing due, and is attachable by a garnishee order, but not otherwise. Deposit receipts are exempt from stamp duty.

TRUST ACCOUNTS

Generally speaking a banker is under no obligation to make any enquiry as to the source of the money which is paid in by a customer; nor is he called upon to ascertain the purposes for which cheques are drawn, his ordinary duty to honour the cheques of his customers imposing upon him almost the necessity of paying without question. Lord Cairns stated the position in *Gray v. Johnston* (1868) as follows: "On the one hand, it would be a most serious matter if bankers were to be allowed, on light and trifling grounds—on grounds of mere suspicion or curiosity—to refuse to honour a cheque drawn by their customer, even although that customer might happen to be an administrator or an executor. On the other hand, it would be equally of serious moment if bankers were to be allowed to shelter themselves under that title, and to say that they were at liberty to become parties or privies to a breach of trust committed with regard to trust property, and, looking to their position as bankers merely, to insist that they were entitled to pay away money which constituted a part of trust property at a time when they knew it was going to be misapplied, and for the purpose of its being so misapplied." In that case it was decided that in order to justify bankers in refusing payment of a customer's cheque, as where a cheque was drawn by an executor as such, there must be some misapplication of the money, some breach of trust, intended by the customer, and the banker must be cognizant of that intention. The existence of a personal benefit, designed or stipulated for the banker, is strong evidence that the banker was privy to the breach of trust. Even when there are two accounts in the name of a customer, provided that the banker has no knowledge that one of them is a trust account, he is entitled to treat the two accounts as the same and combine them for his own benefit.

In a case where a cheque was paid in by stockbrokers, and the bank knew it was the proceeds of a sale of shares but did not know and did not make enquiry whether the money was in the brokers' hands as agents or not, it was held that the bank was entitled to retain the amount in meeting as far as it went the debt due from the brokers to the bank—*Thomson v. Clydesdale Bank* (1893). Again, where a company received trust moneys, paid them to their credit to a separate account at a bank, and failed, as the bank was not shown to have received the moneys as trust funds or had notice during the currency of the account of its trust character, the bank was entitled to set the fund off against its own claim against the company—*Union Bank of Australia v. Murray Aynsley* (1898). A bank would not be so entitled if knowledge of the trust had ever come to it.

Bankers who open a distinct trust account or an account with a title which indicates that it is not the ordinary account of the customer are, however, in a special position. To make a banker liable for misapplication of funds it must be shown that there are circumstances which prove him to be privy to the trust. For example, if two accounts are kept, one a private account and another an estate account, the banker is not entitled to make up an overdraft on the private account by resort to the estate account. But where a company's account is drawn upon by a managing director only, and that managing director has an account at the same bank, provided that no notice of bad faith or irregularity comes to the banker, the banker is not liable for misapplication of the company's funds by the managing director drawing cheques for his own benefit—*The Bank of New South Wales v. Goulburn Valley Butter, &c., Company* (1902).

Generally it may be said that where there are no suspicious circumstances which point to a breach of trust the banker is not justified in dishonouring a cheque. A remittance was made to a country bank by London agents with instructions to place it to the *trust* account of a customer, and there was no trust account and the bank paid it to the ordinary account and advised the customer. The

customer, as trustee, knowing it was trust money, committed a breach of trust by drawing upon it as usual. At the time the customer was overdrawn and crediting the amount reduced the overdraft. He was, however, in good credit, and the bank had no intention of benefiting itself, and continued to allow a further overdraft. The bank was held not to be liable, as it was not shown to have had any knowledge of the breach of trust—*Coleman v. Bucks and Oxon Bank* (1897). Perhaps the case is on the border line, as the strict duty seems to have been for the bank to open a second account.

Where a trustee has paid in money of his own to an account, and also trust money, there is always a presumption that money which he has drawn out for his own use from the account is from his own and not from the trust fund—*In re Hallett's Estate* (1879).

Trustees are quite safe in depositing trust funds at a bank pending investment, but not in leaving them there for an indefinite period.

On a current account in the name of executors or trustees the signature of one may be sufficient, but it is usual in such cases to stipulate that all the executors or trustees shall join, or if there are many, that more than one signature shall be requisite.

ADVANCES TO CUSTOMERS AND OTHERS

When a banker makes loans to his customer it has been remarked that the ordinary relation of banker and customer becomes inverted. This inversion, it may be supposed, constitutes the most profitable part of a banker's business. Bankers do not come within the Moneylenders Act. (See Part III, Chapter XII.) The advance may be by way of an overdraft or loan. As we have seen, a customer who draws a cheque in excess of his balance is really requesting an overdraft, to which the bank may or may not accede. It is more usual to arrange terms under which the customer is allowed to draw up to a certain amount, the bank agreeing to honour his drafts either on his personal security or after deposit of some form of security or a guarantee. A loan for a fixed time may be made in the same way. It is more usually secured by a deposit and formal transfer, and undertaking to repay. Discounting the bills of a customer is another form of lending, the banker in such case taking the bills and in the ordinary course receiving their proceeds at the due date, but in the event of their being dishonoured coming upon his customer.

Advances by a banker are also protected by the general lien which he has over property of the customer deposited with him under ordinary circumstances. (See p. 244.) Deposit of documents or other negotiable securities or documents of title or title deeds to real estate to secure special advances is a subject which has already been noticed in Part III, Chapter XII, and Chapter II of this Part. It is unusual for a bank to receive a deposit of actual chattels, although there is nothing to prevent a bank advancing against plate or jewellery. In ordinary commercial transactions it is most usual for documents of title to goods or realty to be deposited indefinitely until taken up, their mere deposit with or without memorandum constituting an equitable charge in favour of the bank. An individual may very often effect a loan on the security of a policy of life insurance. It is usual for the borrower to take out and deposit a life policy with an undertaking to keep the premiums paid up. This is an equitable assignment, but an assignment by deed with notice to the insurance company would be the better course, unless the loan is a short-time one.

The deposit of negotiable securities is a common method of securing an advance. Questions have arisen as to the rights of the parties when the deposit has been made by someone other than the actual owner, but a person taking a negotiable instrument in good faith and for value obtains a valid title, though he takes from one who has none. A broker in fraud of the owner pledged negotiable instruments with a bank as security for an advance. The bank did not know and did not make enquiry as to whether they belonged to the broker or he had authority to deal with them. The broker absconded, and the bank was held entitled to realize the securities—*London Joint Stock Bank v. Simmons* (1892.) Lord Herschell said: "I apprehend that when a person whose honesty there is no reason to doubt offers negotiable securities to a banker or any other person, the only consideration likely to engage his attention is, whether the security is sufficient to justify the advance required. And I do not think the law lays upon him the obligation of making any enquiry into the title of the person whom he finds in possession of them; of course, if there is anything to arouse suspicion, to lead to a doubt whether the person purporting to transfer them is justified in entering into the contemplated transaction the case would be different, the existence of such suspicion or doubt would be inconsistent with good faith. And if no enquiry were made, or if on enquiry

the doubt were not removed and the suspicion dissipated, I should have no hesitation in holding that good faith was wanting in the person thus acting."

The deposit of bills of lading, dock warrants, &c., is often made to secure an advance. Any bill of lading, dock warrant, warehousekeeper's certificate and warrant or order for the delivery of goods, and any other document used in the ordinary course of business is proof of the possession or control of goods. In the case of bills of lading issued in sets all should be deposited, as the *bona fide* transfer of a bill of lading when goods are at sea will pass the title to the goods. (See also Part VI.) A master or warehouseman with custody of the goods is justified in delivering to a consignee on production of one part of a bill of lading although a prior endorsement for value has taken place of another part. As to the rights of unpaid sellers see Part III, Chapter VI.

Blank Transfers

Where shares are deposited as security they should be accompanied by a transfer in blank. As a matter of law, if a transfer is required to be by deed, as it usually is, a blank transfer is worthless, as delivery must be made of a deed when it is perfect. When such a blank transfer is filled in, it does not pass the legal estate, which may be postponed to prior equitable claims—*Powell v. London and Provincial Bank* (1893).

The subsequent assent of the transferor may be a re-delivery. A blank transfer may give a good equitable claim, and if no prior title has accrued the transferee may compel a legal transfer. (See also Chapter VII of this Part.)

If shares are transferable by writing only, a blank transfer, even if in the form of a deed, gives authority to transfer to anyone. If the share certificate only is deposited as security for a debt and interest, without the transfer or memorandum, an order of Court must be obtained for transfer and foreclosure—*Harrold v. Plenty* (1901).

A company which has notice of a charge on shares is liable for wrongful registration.

Bankers' Lien

A banker has a general lien on all securities deposited unless they are deposited under an express contract or under circumstances which exclude lien. Lien extends to any of several accounts.

"Bankers", said Lord Campbell in the well-known case of *Brandao v. Barnett* (1846), "most undoubtedly have a general lien on all securities deposited with them, as bankers, by a customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with the lien." The mere fact that there is a specific advance made against specific securities does not negative a general lien. Where a deposit of share documents was made for a specific purpose, which was satisfied, but the documents were left with the stockbrokers, it was held nevertheless that the brokers had a general lien on the shares for amounts due on Stock Exchange transactions—*In re London and Globe Finance Corporation* (1902).

Banker's lien does not cover all securities of which the banker may have possession. For example, it does not cover valuables deposited for safe custody in a box, nor generally documents pledged or deposited for a special purpose or documents known to belong to someone else when deposited.

Where there was a deposit of a life policy accompanied by a memorandum to secure an overdraft not exceeding a specified amount, it was held that the general lien was displaced and the charge limited to the amount specified.

On the other hand, lien may extend to property deposited by a customer, although, in fact, it belongs to a third party.

The right of lien may be surrendered either specifically or by implication. See generally as to "Lien", Part III, Chapter XII.

The Clearing House

The system in vogue at the London Clearing House has practically obtained for a hundred years or more, and is described in the report of the case of *Warwick v. Rogers* (1843). (See Chapter II of this Part.)

BANK NOTES, BANKERS' DRAFTS, LETTERS OF CREDIT, ETC.

The right to issue bank notes by the Bank of England and by certain country banks is noted elsewhere. (See Chapters I and II of this Part.) Bank notes in England and Wales must be for £5 and upwards. In Scotland and Ireland smaller notes are common. A bank note is intended to pass from hand to hand as money, and a Bank of England note is legal tender at any place in England or Wales except at the Bank of England itself, but not in Ireland and Scotland. Tender of payment in country bank notes is good if not objected to.

Bank post bills are bills payable to order at so many days. They may be used for remitting small sums of money, and are practically promissory notes. They are now issued by the Bank of England only.

Letters of Credit

A letter of credit, called an open letter if unconditional, or if with collateral security a document credit, is a letter of request from one person requesting another, generally abroad, to advance money or give credit to the person named in the letter, which the person issuing the letter undertakes to repay. A general letter may be addressed to several correspondents, but more usually a special letter addressed to one person is issued. Such a document is not "negotiable". (For Forms, see Part I, Chapter VI.)

Circular Notes

Circular notes are requests by a banker to his correspondents abroad to pay certain sums to a person named therein. They are commonly used by travellers, who carry a letter of indication, which they present with the letter of credit on obtaining payment.

CUSTODY OF VALUABLES

It is usual for banks to undertake the custody of valuables for their customers, and for this they make no special charge. The valuables may be sent to the bank in a box of which the key is kept by the customer, or in a sealed parcel, or open so that they can be recorded in the books of the bank. The last method is most convenient if payments are to be collected on the securities. It is probable that the banker is in the position of gratuitous bailee, although it is not quite clear that some portion of the ordinary profit of the account ought not to be set against this service, which would take the transaction out of the gratuitous category. (As to "Bailment", see Part III, Chapter VI.) The point has never been satisfactorily decided, the sensational case of *Langtry v. The Union Bank of London* in 1896 having been settled out of Court. In that case the bank had erroneously delivered a box to someone presenting a forged order. The bank paid a large sum by way of damages without admitting negligence. The liability of a bank under such circumstances is probably well established on the ground of conversion by delivering to the wrong person, irrespective of negligence.

The bank is answerable to the person depositing for redelivery to him or to his valid order. The fact that a claim is made by a third party is no excuse for a bank retaining securities deposited when demanded by the depositor.

BANKS AS CUSTODIAN TRUSTEES

Custodian trustees came into being under the Public Trustee Act, 1906, whereby a Public Trustee was constituted, but the duties of custodian trusteeship may also be discharged by others.

Incorporated banking companies, but not private banks, are competent to act as custodian trustees, with insurance or guarantee or trust companies, or friendly societies, or any such body corporate established for charitable or philanthropic purposes. The application to act as custodian trustee must be approved by the Public Trustee or the Treasury. The Public Trustee is entitled to charge a fee up to ten guineas for approving, and the approval may be withdrawn at any time.

The appointment of a custodian trustee may be by the Court, by any testator, settlor, or other creator of a trust, or parties having power to appoint trustees. The trust property is transferred to the custodian trustee as if he were the sole trustee. The management remains with the managing trustees, who have access to the securities and documents of title, which remain in the custody of the custodian trustee. The latter's concurrence is required, and he is not liable unless he concurs.

A custodian trustee acting in good faith may accept, and is not liable for accepting, the written statement of the managing trustees as to birth, death, marriage, or other such matters of fact in connection with the beneficiary and the trust property; and is not liable for acting on written advice obtained by the managing trustees independent of the custodian trustee.

The fees which may be charged by custodian trustees are fixed by the Fees Order, 1909, of the Treasury, and are payable according to capital, investment, and income.

GUARANTEES AND REPRESENTATIONS

Guarantees are commonly taken by a bank to secure the indebtedness of a customer on loan or overdraft, or the fidelity of employees. See Part III, Chapter VIII.

Representations as to Credit

Any representation as to the credit of another person can only be sued upon if made in writing, signed by the party who made it. The signature of an agent is not sufficient. A bank, whether an incorporated company or a private firm, is not liable in respect of a representation made in a letter signed by a branch manager or other agent —See decision in the case *Hirst versus West Riding Union Banking Company* (1901).

CONFIDENTIAL INFORMATION

It has been seen in connection with the refusal of payment that it is the duty of a bank as little as possible to disclose the state of a customer's account. It follows, therefore, that a bank is not justified in giving strangers information to the prejudice of the customer. A bank is commonly given as a reference by a customer, in which case a confidential statement made by the bank *bona fide*, even if injurious to the customer, is not actionable. It is a safe course for a bank to answer enquiries through another bank only when persons are specifically referred to the bank by the customer. A bank, however, is justified upon a reasonable and proper occasion in giving information, if in the interests of the customer, when not actually asked by him so to do.

When information is asked by bankers as to the financial position of a customer, to render the banker liable for misrepresentation, fraud must be shown. It is no part of a banker's duty to make enquiries elsewhere, but only to answer honestly questions put to him from materials he has before him, as was said in a recent case. Ordinarily a bank should not give information as to a customer without his consent, but the Master of the Rolls characterized as a "wholesome and businesslike practice" the giving of confidential information by one banker to another—*Parsons v. Barclay* (1910).

BANKERS' BOOKS IN EVIDENCE

In consequence of the great inconvenience that would be caused to the ordinary business of a bank by having to produce its current books in a Court of Justice, the Bankers' Books Evidence Act, 1879, was passed. In all legal proceedings or arbitrations to which the bank is not personally a party, it is provided that a copy of any entry in the bankers' books, which are used in the ordinary business of the bank, shall be received as *prima facie* evidence. The copy must be proved by a partner or official of the bank, either by oral evidence or by affidavit. It must be proved that the book from which the entry was taken was one of the ordinary books in the custody and control of the bank, that the entry was made in the usual and ordinary course of the business of the bank, and that the copy of the entry was examined with the original and found correct. Parties may obtain leave of the Court to inspect entries in the bankers' books.

CRIMES IN CONNECTION WITH BANKING

This is not the place to deal at any length with the criminal law, but it must be noted that the profession of banking is one peculiarly open to certain classes of crime. This is natural, owing to the nature of the transactions and the ease with which money can be wrongfully converted. With every precaution that can be taken, the conduct of banking must rest upon the honesty of those engaged in it, and the probity of the general and commercial public.

Bankers who accept the property of their customers as agents, trustees, or bailees, and not in the ordinary way of current account, are answerable if they disobey specific instructions, and for fraudulent misappropriation are amenable to the criminal law; nor does the property in such securities pass to their trustees in bankruptcy.

Any banker entrusted with any property for safe custody, or to apply it to any purpose, for any person, either solely or jointly with any other person, who fraudulently converts it to his own use or benefit or to that of some other person

other than the person by whom he was so entrusted, is guilty of a misdemeanour.

Directors, members, managers, and public officers of a company fraudulently applying property to their own use are guilty of a misdemeanour. The destruction, falsifying of or making false entries in books with intent to defraud, are misdemeanours, as well as the publication of false statements. Officers of Savings Banks receiving and not paying over deposits are guilty of a misdemeanour. Partners and employees of the bank may be convicted of offences of forgery, embezzlement, or larceny.

As regards the outside public, the most common offences are in connection with forgery, larceny, and obtaining by false pretences, while cases of housebreaking and robbery with violence are sometimes met with.

The Forgery Act, 1861, provides that whosoever shall forge, counterfeit, or utter, with intent to defraud, any matter shall be punished under the Act.

Forgery of Treasury bills, bank notes, deeds, bonds, bills of exchange, and promissory notes, transfers of stock, &c., are specially provided for, and punishable by penal servitude for life.

Obliterating or altering any crossing on a cheque or draft with intent to defraud is a forgery similarly punishable.

Obtaining by any false pretence from any other person any chattel, money, or valuable security, or any money to be paid or chattel or valuable security to be delivered to any other person with intent to defraud is a misdemeanour. The theft of cheques, the stealing, destruction, cancelling, obliterating of any valuable security or document of title to goods are also felonies. If a person is guilty of stealing, embezzling, converting, or disposing of or knowingly receiving any such chattel, money, &c., and he is indicted and convicted, the Court may award restitution of the property to the true owner or his representatives. But in the case of any valuable security which has been *bona fide* paid or discharged by a person liable to payment thereof, or in the case of a negotiable instrument which has been *bona fide* received by transfer or delivery by some person for a just and valuable consideration, without any notice and without any reasonable cause to suspect that it has been the subject of any criminal offence, restitution will not be awarded.

AUTHORITIES.—*Grant*, "Law of Banker and Banking"; *Hart*, "Law of Banking"; *Paget*, "Law of Banking".